



## 103RD GENERAL ASSEMBLY

### State of Illinois

2023 and 2024

HB5625

Introduced 2/9/2024, by Rep. Kam Buckner

#### SYNOPSIS AS INTRODUCED:

820 ILCS 305/1  
820 ILCS 305/10

from Ch. 48, par. 138.1  
from Ch. 48, par. 138.10

Amends the Workers' Compensation Act. Provides that the definition of "employee" includes every student participant in an athletic program at an institutions of higher education, but only when the student is participating in an athletic event, travel to and from an athletic event, or an organized training activity. Sets forth a provision to calculate the average weekly wage of a student athlete.

LRB103 37972 SPS 68104 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 Workers' Compensation Act is amended by  
5 changing Sections 1 and 10 as follows:

6 (820 ILCS 305/1) (from Ch. 48, par. 138.1)

7 Sec. 1. This Act may be cited as the Workers' Compensation  
8 Act.

9 (a) The term "employer" as used in this Act means:

10 1. The State and each county, city, town, township,  
11 incorporated village, school district, body politic, or  
12 municipal corporation therein.

13 2. Every person, firm, public or private corporation,  
14 including hospitals, public service, eleemosynary, religious  
15 or charitable corporations or associations who has any person  
16 in service or under any contract for hire, express or implied,  
17 oral or written, and who is engaged in any of the enterprises  
18 or businesses enumerated in Section 3 of this Act, or who at or  
19 prior to the time of the accident to the employee for which  
20 compensation under this Act may be claimed, has in the manner  
21 provided in this Act elected to become subject to the  
22 provisions of this Act, and who has not, prior to such  
23 accident, effected a withdrawal of such election in the manner

1 provided in this Act.

2 3. Any one engaging in any business or enterprise referred  
3 to in subsections 1 and 2 of Section 3 of this Act who  
4 undertakes to do any work enumerated therein, is liable to pay  
5 compensation to his own immediate employees in accordance with  
6 the provisions of this Act, and in addition thereto if he  
7 directly or indirectly engages any contractor whether  
8 principal or sub-contractor to do any such work, he is liable  
9 to pay compensation to the employees of any such contractor or  
10 sub-contractor unless such contractor or sub-contractor has  
11 insured, in any company or association authorized under the  
12 laws of this State to insure the liability to pay compensation  
13 under this Act, or guaranteed his liability to pay such  
14 compensation. With respect to any time limitation on the  
15 filing of claims provided by this Act, the timely filing of a  
16 claim against a contractor or subcontractor, as the case may  
17 be, shall be deemed to be a timely filing with respect to all  
18 persons upon whom liability is imposed by this paragraph.

19 In the event any such person pays compensation under this  
20 subsection he may recover the amount thereof from the  
21 contractor or sub-contractor, if any, and in the event the  
22 contractor pays compensation under this subsection he may  
23 recover the amount thereof from the sub-contractor, if any.

24 This subsection does not apply in any case where the  
25 accident occurs elsewhere than on, in or about the immediate  
26 premises on which the principal has contracted that the work

1 be done.

2 4. Where an employer operating under and subject to the  
3 provisions of this Act loans an employee to another such  
4 employer and such loaned employee sustains a compensable  
5 accidental injury in the employment of such borrowing employer  
6 and where such borrowing employer does not provide or pay the  
7 benefits or payments due such injured employee, such loaning  
8 employer is liable to provide or pay all benefits or payments  
9 due such employee under this Act and as to such employee the  
10 liability of such loaning and borrowing employers is joint and  
11 several, provided that such loaning employer is in the absence  
12 of agreement to the contrary entitled to receive from such  
13 borrowing employer full reimbursement for all sums paid or  
14 incurred pursuant to this paragraph together with reasonable  
15 attorneys' fees and expenses in any hearings before the  
16 Illinois Workers' Compensation Commission or in any action to  
17 secure such reimbursement. Where any benefit is provided or  
18 paid by such loaning employer the employee has the duty of  
19 rendering reasonable cooperation in any hearings, trials or  
20 proceedings in the case, including such proceedings for  
21 reimbursement.

22 Where an employee files an Application for Adjustment of  
23 Claim with the Illinois Workers' Compensation Commission  
24 alleging that his claim is covered by the provisions of the  
25 preceding paragraph, and joining both the alleged loaning and  
26 borrowing employers, they and each of them, upon written

1 demand by the employee and within 7 days after receipt of such  
2 demand, shall have the duty of filing with the Illinois  
3 Workers' Compensation Commission a written admission or denial  
4 of the allegation that the claim is covered by the provisions  
5 of the preceding paragraph and in default of such filing or if  
6 any such denial be ultimately determined not to have been bona  
7 fide then the provisions of Paragraph K of Section 19 of this  
8 Act shall apply.

9 An employer whose business or enterprise or a substantial  
10 part thereof consists of hiring, procuring or furnishing  
11 employees to or for other employers operating under and  
12 subject to the provisions of this Act for the performance of  
13 the work of such other employers and who pays such employees  
14 their salary or wages notwithstanding that they are doing the  
15 work of such other employers shall be deemed a loaning  
16 employer within the meaning and provisions of this Section.

17 (b) The term "employee" as used in this Act means:

18 1. Every person in the service of the State, including  
19 members of the General Assembly, members of the Commerce  
20 Commission, members of the Illinois Workers' Compensation  
21 Commission, and all persons in the service of the University  
22 of Illinois, county, including deputy sheriffs and assistant  
23 state's attorneys, city, town, township, incorporated village  
24 or school district, body politic, or municipal corporation  
25 therein, whether by election, under appointment or contract of  
26 hire, express or implied, oral or written, including all

1 members of the Illinois National Guard while on active duty in  
2 the service of the State, and all probation personnel of the  
3 Juvenile Court appointed pursuant to Article VI of the  
4 Juvenile Court Act of 1987, and including any official of the  
5 State, any county, city, town, township, incorporated village,  
6 school district, body politic or municipal corporation therein  
7 except any duly appointed member of a police department in any  
8 city whose population exceeds 500,000 according to the last  
9 Federal or State census, and except any member of a fire  
10 insurance patrol maintained by a board of underwriters in this  
11 State. A duly appointed member of a fire department in any  
12 city, the population of which exceeds 500,000 according to the  
13 last federal or State census, is an employee under this Act  
14 only with respect to claims brought under paragraph (c) of  
15 Section 8.

16 One employed by a contractor who has contracted with the  
17 State, or a county, city, town, township, incorporated  
18 village, school district, body politic or municipal  
19 corporation therein, through its representatives, is not  
20 considered as an employee of the State, county, city, town,  
21 township, incorporated village, school district, body politic  
22 or municipal corporation which made the contract.

23 2. Every person in the service of another under any  
24 contract of hire, express or implied, oral or written,  
25 including persons whose employment is outside of the State of  
26 Illinois where the contract of hire is made within the State of

1 Illinois, persons whose employment results in fatal or  
2 non-fatal injuries within the State of Illinois where the  
3 contract of hire is made outside of the State of Illinois, and  
4 persons whose employment is principally localized within the  
5 State of Illinois, regardless of the place of the accident or  
6 the place where the contract of hire was made, and including  
7 noncitizens, and minors who, for the purpose of this Act are  
8 considered the same and have the same power to contract,  
9 receive payments and give quittances therefor, as adult  
10 employees.

11 3. Every sole proprietor and every partner of a business  
12 may elect to be covered by this Act.

13 4. Every student participant in an athletic program at an  
14 institutions of higher education, but only when the student is  
15 participating in an athletic event, travel to and from an  
16 athletic event, or an organized training activity.

17 An employee or his dependents under this Act who shall  
18 have a cause of action by reason of any injury, disablement or  
19 death arising out of and in the course of his employment may  
20 elect to pursue his remedy in the State where injured or  
21 disabled, or in the State where the contract of hire is made,  
22 or in the State where the employment is principally localized.

23 However, any employer may elect to provide and pay  
24 compensation to any employee other than those engaged in the  
25 usual course of the trade, business, profession or occupation  
26 of the employer by complying with Sections 2 and 4 of this Act.

1 Employees are not included within the provisions of this Act  
2 when excluded by the laws of the United States relating to  
3 liability of employers to their employees for personal  
4 injuries where such laws are held to be exclusive.

5 The term "employee" does not include persons performing  
6 services as real estate broker, broker-salesman, or salesman  
7 when such persons are paid by commission only.

8 (c) "Commission" means the Industrial Commission created  
9 by Section 5 of "The Civil Administrative Code of Illinois",  
10 approved March 7, 1917, as amended, or the Illinois Workers'  
11 Compensation Commission created by Section 13 of this Act.

12 (d) To obtain compensation under this Act, an employee  
13 bears the burden of showing, by a preponderance of the  
14 evidence, that he or she has sustained accidental injuries  
15 arising out of and in the course of the employment.

16 (Source: P.A. 102-1030, eff. 5-27-22.)

17 (820 ILCS 305/10) (from Ch. 48, par. 138.10)

18 Sec. 10. The basis for computing the compensation provided  
19 for in Sections 7 and 8 of the Act shall be as follows:

20 The compensation shall be computed on the basis of the  
21 "Average weekly wage" which shall mean the actual earnings of  
22 the employee in the employment in which he was working at the  
23 time of the injury during the period of 52 weeks ending with  
24 the last day of the employee's last full pay period  
25 immediately preceding the date of injury, illness or



1     disablement excluding overtime, and bonus divided by 52; but  
2     if the injured employee lost 5 or more calendar days during  
3     such period, whether or not in the same week, then the earnings  
4     for the remainder of such 52 weeks shall be divided by the  
5     number of weeks and parts thereof remaining after the time so  
6     lost has been deducted. Where the employment prior to the  
7     injury extended over a period of less than 52 weeks, the method  
8     of dividing the earnings during that period by the number of  
9     weeks and parts thereof during which the employee actually  
10    earned wages shall be followed. Where by reason of the  
11   shortness of the time during which the employee has been in the  
12   employment of his employer or of the casual nature or terms of  
13   the employment, it is impractical to compute the average  
14   weekly wages as above defined, regard shall be had to the  
15   average weekly amount which during the 52 weeks previous to  
16   the injury, illness or disablement was being or would have  
17   been earned by a person in the same grade employed at the same  
18   work for each of such 52 weeks for the same number of hours per  
19   week by the same employer. In the case of volunteer firemen,  
20   police and civil defense members or trainees, the income  
21   benefits shall be based on the average weekly wage in their  
22   regular employment. When the employee is working concurrently  
23   with two or more employers and the respondent employer has  
24   knowledge of such employment prior to the injury, his wages  
25   from all such employers shall be considered as if earned from  
26   the employer liable for compensation. In the case of student

1 athletes, the average weekly wage shall be computed by taking  
2 the total scholarship awarded to the student athlete for his  
3 or her participation in an athletic program and all other  
4 grants and subsidies awarded to him or her due to their  
5 participation in the athletic program in the current academic  
6 year, or if the athlete is not injured, during the prior  
7 academic year or the following academic year, whichever is  
8 greater, and dividing that total compensation by 52.

9 (Source: P.A. 81-1482.)