

# SB2003



## 103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

SB2003

Introduced 2/9/2023, by Sen. Javier L. Cervantes

### 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 26341 SPS 52702 b

A BILL FOR

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.)