

1 AN ACT to create the Illinois Living Wage Act.

2 Be it enacted by the People of the State of Illinois,
3 represented in the General Assembly:

4 Section 1. Short title. This Act may be cited as the
5 Illinois Living Wage Act.

6 Section 5. Definitions. In this Act:

7 "Director" means the Director of Labor.

8 "Employer" means either:

9 (1) a for-profit or not-for-profit entity that (i)
10 has a State contract, subject to the Illinois Procurement
11 Code, for services valued at \$100,000 or more, (ii) has a
12 subcontract for services valued at \$25,000 or more under
13 a contract covered by item (i), or (iii) is a health care
14 facility, as defined in this Section, that receives 50%
15 or more of its annual gross revenues from the State; or

16 (2) the State when it compensates personal care
17 attendants providing services under Section 3 of the
18 Disabled Persons Rehabilitation Act.

19 "Health care facility" means an intermediate care
20 facility for the mentally retarded, a long term care
21 facility, a hospital, a recipient of a Department of Human
22 Services grant for services provided to the developmentally
23 disabled or mentally ill, or a community-integrated living
24 arrangement.

25 "Index" means the most recent available figure published
26 in the federal register by the United States Department of
27 Health and Human Services and updated on an annual basis,
28 which defines the poverty guidelines for a family of 4 in the
29 48 contiguous states and the District of Columbia.

30 "Living wage" means an hourly wage rate set by the
31 Director that, based on a 40-hour week and a 52-week year,

1 would provide an employee with an annual income that is 100%
2 of the index. If the published poverty guidelines for a
3 family of 4 are reduced, the living wage set by the Director
4 may not be less than the hourly wage in effect during the
5 previous year.

6 "Unit" means an officer or entity of the executive branch
7 that administers a contract for services requiring the
8 payment of living wage rates.

9 Section 10. Application. This Act applies to an
10 employee of an employer and to a personal care attendant
11 compensated by the State:

12 (1) for the duration of a contract subject to this
13 Act, if the employee's time during any workweek relates
14 to a State contract for services subject to the Illinois
15 Procurement Code or a subcontract for services under a
16 State contract subject to the Illinois Procurement Code;
17 or

18 (2) if the employer is a health care provider
19 subject to this Act.

20 Section 15. Payment of living wage.

21 (a) Subject to subsections (b), (c), and (d) of this
22 Section, an employer subject to this Act must pay each
23 employee covered under this Act at an hourly rate that is at
24 least the living wage as set by the Director.

25 (b) If a contract is subject to the provisions of the
26 Prevailing Wage Act, an employer must pay an employee the
27 wage rate required under that Act or the wage rate required
28 by this Act, whichever is higher.

29 (c) If a contract for services covers work previously
30 performed by State employees, an employer must pay an
31 employee (i) a wage rate that is not less than the wage that
32 would be paid to a State employee if the work continued to be

1 performed by State employees plus either benefits or the cash
2 equivalent of benefits or (ii) the wage rate under this Act,
3 whichever is higher.

4 (d) If the State provides grants, funds, or other
5 benefits to a social service agency delegated by the State to
6 perform social service functions, the State shall calculate
7 employment costs for those agencies at a level sufficient to
8 pay the living wage.

9 (e) If the application of this Act to any State contract
10 would result in a loss to the State of federal funds, the
11 unit responsible for the contract or program may waive the
12 application of this Act to the extent necessary to protect
13 federal funding.

14 Section 20. Determination of living wage rate; rules.

15 (a) The Director shall annually determine the living
16 wage rate applicable under this Act.

17 (b) The Director shall require that an employer:

18 (1) keep records, including records of employees
19 subject to this Act and the wages paid to the employees;
20 and

21 (2) submit to the Director reports that the
22 Director determines necessary for the effective
23 administration and enforcement of this Act.

24 Section 25. Employee's rights.

25 (a) An employee covered by this Act has a right of free
26 speech and association.

27 (b) (1) Subject to paragraph (2) of this subsection, an
28 agreement by an employee to commute, release, or waive
29 the employee's rights under this Act is void.

30 (2) Wage rates required under this Act may be
31 modified through a bona fide collective bargaining
32 agreement.

1 Section 30. Employee retention requirements.

2 (a) If any contract provides for the continuation of a
3 service currently provided by another contractor, the
4 selected contractor, or subcontractor, is subject to this
5 Section.

6 (b) This Section applies to any person employed by the
7 predecessor contractor or any subcontractor to the
8 predecessor contractor who (i) provides direct labor or
9 service on the State contract and (ii) is not an exempt
10 employee under the Fair Labor Standards Act.

11 (c) Employment shall be offered to all qualified
12 retention employees. A "qualified retention employee" is one
13 who has been employed for at least the 6-month period before
14 the date of the new contract by the predecessor service
15 contractor or subcontractor. The new service contractor or
16 subcontractor may deem a retention employee not to be
17 qualified only if:

18 (1) the employee has been convicted of a crime that
19 is related to the job or to his or her job performance;
20 or

21 (2) the contractor can demonstrate that the
22 employee presents a significant danger to customers,
23 co-workers, or State staff.

24 The new service contractor or subcontractor may treat any
25 of its current employees as retention employees for purposes
26 of this Section who, based on payroll records or other
27 reliable evidence, can be shown to the satisfaction of the
28 Director to have been employed for at least the 6-month
29 period before the date of the new contract by the contractor
30 or subcontractor and who would otherwise need to be
31 terminated as a result of the employee retention requirements
32 of this Section.

33 In the event that the service contractor or subcontractor
34 does not have enough positions available for all qualified

1 retention employees and its current eligible retention
2 employees, the service contractor or subcontractor shall hire
3 the predecessor contractor's qualified retention employees
4 and retain its current employees who are eligible for
5 retention under this Section by seniority within each
6 employment classification. For any positions that become
7 available during the initial 90-day period of the new
8 contract, the service contractor or subcontractor shall hire
9 qualified retention employees and rehire its current
10 employees who are eligible for retention under this Section
11 by seniority within each employment classification.

12 (c) (1) Qualified employees of the predecessor
13 contractor may not be discharged without cause during the
14 initial 90-day period of their employment.

15 (2) Each qualified retention employee who receives
16 a satisfactory performance evaluation at the end of the
17 initial 90-day period of employment must be offered
18 continued employment under the terms and conditions of
19 employment established by the contractor or subcontractor
20 for its employees.

21 Section 35. Posting of notice.

22 (a) Each employer subject to this Act must post in a
23 prominent and easily accessible place at the work site during
24 any period in which an employee is entitled to a living wage
25 under this Act, a notice of:

- 26 (1) the living wage rate;
- 27 (2) employee rights under this Act; and
- 28 (3) the name, address, and telephone number of the
29 Director.

30 The notice required by this Section shall be posted in
31 English, Spanish, and any other language commonly used by
32 employees at the work site.

33 (b) The Director may impose on a person that violates

1 this Section a civil penalty not exceeding \$1,000 per
2 violation.

3 Section 40. Investigations.

4 (a) The Director shall investigate violations of this
5 Act.

6 (b) A written or oral complaint or statement made by an
7 employee to the Director is confidential and may not be
8 disclosed to the employer without the consent of the
9 employee.

10 (c) An employer subject to this Act shall allow the
11 Director, or the Director's designee, access to a work site,
12 access to payroll records, and an opportunity to interview
13 employees for purposes of enforcing this Act.

14 (d) (1) Within 30 days after completing an
15 investigation, the Director shall issue an order for a
16 hearing.

17 (2) At least 10 days before the hearing, the
18 Director shall serve, personally or by mail, written
19 notice of the hearing on all interested parties. The
20 notice shall include (i) a statement of facts disclosed
21 in the investigation and (ii) the time and place of the
22 hearing.

23 (3) In conducting a hearing, the Director may
24 subpoena witnesses, administer oaths, and compel the
25 production of records, books, papers, and other evidence.

26 (e) After the conclusion of the hearing, the Director
27 shall (i) issue a determination and (ii) serve, personally or
28 by mail, each interested party with a copy of the
29 determination.

30 (f) If the Director finds a violation of this Act, the
31 Director shall determine the amount of restitution and
32 liquidated damages to be assessed under Section 45. On
33 receipt of the determination, the employer shall pay the

1 affected employees the amount due in accordance with the
2 Director's determination.

3 Section 45. Restitution and damages. If the Director
4 determines that an employer violated a provision of this Act
5 or rules adopted under this Act, the employer shall:

- 6 (1) pay restitution to each affected employee; and
- 7 (2) pay to the State liquidated damages of \$20 per
8 day for each employee who is paid less than the hourly
9 rate required by this Act.

10 Section 50. Recovery by employee.

11 (a) If an employee is paid less than the wage rate
12 required by this Act or if an employer retaliates against the
13 employee solely because the employee exercised rights granted
14 by this Act, the employee is entitled to sue to recover:

- 15 (1) for lost wages, treble the amount of the
16 difference between the wage rate required by this Act and
17 the amount received by the employee; and
- 18 (2) for retaliation, compensation and punitive
19 damages.

20 (b) A determination by the Director that an employer is
21 required to make restitution does not preclude an employee
22 from filing an action under this Section.

23 (c) An action under subsection (a) is considered to be a
24 suit for wages and a judgement and has the same force and
25 effect as any other judgement for wages.

26 (d) The failure of an employee to protest orally or in
27 writing about the payment of a wage that is less than the
28 wage rate required by this Act or about retaliatory actions
29 by an employer is not a bar to recovery in an action under
30 this Section.

31 (e) In addition to damages under subsection (a), the
32 court may award an employee who successfully collects wages

1 or damages under this Section the reasonable costs of filing
2 the lawsuit, including reasonable attorney's fees.

3 Section 55. Retaliation prohibited. An employer may not
4 retaliate against an employee solely because the employee
5 exercises the employee's rights under this Act.

6 Violation of this Section is a business offense for which
7 a fine not to exceed \$2,500 may be imposed.

8 Section 800. The Illinois Procurement Code is amended by
9 adding Section 20-17 as follows:

10 (30 ILCS 500/20-17 new)

11 Sec. 20-17. Labor disputes; living wage.

12 (a) Before issuing invitations for bids or requests for
13 proposals for contracts for services, the procurement officer
14 shall determine the level of vulnerability of the proposed
15 contract to service or labor disputes and the degree to which
16 labor peace is essential to the proprietary interests of the
17 State. The determination shall be based on consideration of
18 factors that include, but are not limited to, the following:

19 (1) whether the service or labor is provided on a
20 State site or a site that is important to the proprietary
21 interests of the State;

22 (2) whether the contractor relies on a significant
23 amount of public patronage;

24 (3) the economic effect of any disruption on State
25 expenditures or revenues; and

26 (4) the effect of any disruption on the citizens,
27 tourists, and businesses of the State.

28 (b) The procurement officer shall consider the
29 relationship between (i) the extent to which the State is
30 vulnerable from the effects of labor unrest and (ii) the type
31 of assurance of protection against labor discord that the

1 contractor needs to provide.

2 (c) Each bid and proposal for contracts for services
3 must contain provisions that (i) include adequate assurances
4 of protection against labor discord in light of the State's
5 vulnerability to the effects of labor unrest and (ii)
6 certifies that the contractor will comply with the provisions
7 of the Illinois Living Wage Act.

8 (d) If at any time during the duration of the contract,
9 the contractor fails to comply with the Illinois Living Wage
10 Act, the contract is voidable under Section 50-60.

11 Section 99. Effective date. This Act takes effect on
12 January 1, 2004.