

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 1. Short title. This Act may be cited as the
5 Employee Classification Act.

6 Section 3. Purpose. This Act is intended to address the
7 practice of misclassifying employees as independent
8 contractors.

9 Section 5. Definitions. As used in this Act:

10 "Contractor" means any person who, in any capacity other
11 than as the employee of another for wages as the sole
12 compensation, undertakes to construct, alter, repair, move,
13 wreck, or demolish any fixture or structure. "Contractor"
14 includes a general contractor and a subcontractor, but does not
15 include a person who furnishes only materials or supplies.

16 "Department" means the Department of Labor.

17 "Director" means the Director of Labor.

18 "Employer" means any contractor that employs individuals
19 deemed employees under Section 10 of this Act; however,
20 "employer" does not include (i) the State of Illinois or its
21 officers, agencies, or political subdivisions or (ii) the
22 federal government.

23 "Entity" means any contractor for which a person is
24 performing any service and is not classified as an employee
25 under Section 10 of this Act; however, "entity" does not
26 include (i) the State of Illinois or its officers, agencies, or
27 political subdivisions or (ii) the federal government.

28 Section 10. Applicability; status of individuals
29 performing service. For the purposes of this Act, an individual
30 performing any service for a contractor is deemed to be an

1 employee unless it is shown that:

2 (1) the individual has been and will continue to be
3 free from control or direction over the performance of the
4 service, both under his or her contract of service and in
5 fact;

6 (2) the service is either outside the usual course of
7 the business for which the service is performed or the
8 service is performed outside of all the places of business
9 of the enterprise for which the service is performed; and

10 (3) the individual is engaged in an independently
11 established trade, occupation, profession, or business.

12 Section 15. Notice.

13 (a) The Department shall post a summary of the requirements
14 of this Act in English, Spanish, and Polish on its web site and
15 on bulletin boards in each of its offices.

16 (b) An employer or entity for whom one or more persons
17 classified as independent contractors are performing service
18 shall post and keep posted, in conspicuous places on each job
19 site where those persons work and in each of its offices, a
20 notice in English, Spanish, and Polish, prepared by the
21 Department, summarizing the requirements of this Act. The
22 Department shall furnish copies of summaries to employers and
23 entities upon request without charge.

24 Section 20. Failure to properly designate or classify
25 persons performing services as employees.

26 (a) Except as provided in subsection (b), it is a violation
27 of this Act for an employer or entity not to designate an
28 individual as an employee under Section 10 of this Act unless
29 the employer or entity satisfies the provisions of Section 10.

30 (b) Subsection (a) does not apply to any designation of an
31 individual by an employer or entity in accordance with the
32 requirements of any other law, rule, or regulation.

33 Section 25. Enforcement. It shall be the duty of the

1 Department to enforce the provisions of this Act. The
2 Department shall have the power to conduct investigations in
3 connection with the administration and enforcement of this Act
4 and any investigator with the Department shall be authorized to
5 visit and inspect, at all reasonable times, any places covered
6 by this Act and shall be authorized to inspect, at all
7 reasonable times, documents related to the determination of
8 whether a person is an employee under Section 10 of this Act.
9 The Department shall conduct hearings in accordance with the
10 Illinois Administrative Procedure Act upon written complaint
11 by an investigator of the Department or any interested person
12 of a violation of the Act. After the hearing, if supported by
13 the evidence, the Department may (i) issue and cause to be
14 served on any party an order to cease and desist from further
15 violation of the Act, (ii) take affirmative or other action as
16 deemed reasonable to eliminate the effect of the violation, and
17 (iii) determine the amount of any civil penalty allowed by the
18 Act. The Director of Labor or his or her representative may
19 compel, by subpoena, the attendance and testimony of witnesses
20 and the production of books, payrolls, records, papers, and
21 other evidence in any investigation or hearing and may
22 administer oaths to witnesses.

23 Section 30. Review under Administrative Review Law. Any
24 party to a proceeding under this Act may apply for and obtain
25 judicial review of an order of the Department entered under
26 this Act in accordance with the provisions of the
27 Administrative Review Law, and the Department in proceedings
28 under the Act may obtain an order from the court for the
29 enforcement of its order.

30 Section 35. Contempt. Whenever it appears that any employer
31 or entity has violated a valid order of the Department issued
32 under this Act, the Director of Labor may commence an action
33 and obtain from the court an order commanding the employer or
34 entity to obey the order of the Department or be adjudged

1 guilty of contempt of court and punished accordingly.

2 Section 40. Penalties. An employer or entity that violates
3 any of the provisions of this Act or any rule adopted under
4 this Act shall be subject to a civil penalty not to exceed
5 \$1,500 for each violation found in the first audit by the
6 Department. Following a first audit, an employer or entity
7 shall be subject to a civil penalty not to exceed \$2,500 for
8 each repeat violation found by the Department within 5 years.
9 For purposes of this Section, each violation of this Act for
10 each person and for each day the violation continues shall
11 constitute a separate and distinct violation. In determining
12 the amount of a penalty, the Director shall consider the
13 appropriateness of the penalty to the employer or entity
14 charged, upon the determination of the gravity of the
15 violations. For any second or subsequent violation determined
16 by the Department which is within 5 years of an earlier
17 violation, the Department shall add the employer or entity's
18 name to a list to be posted on the Department's website. Upon
19 such determination the Department shall notify the violating
20 employer or entity. Such employer or entity shall then have 10
21 working days to request a hearing by the Department on the
22 alleged violations. Failure to respond within the 10 working
23 day period shall result in automatic and immediate placement
24 and publication on the list. If the employer or entity requests
25 a hearing within the 10 working day period, the Director shall
26 set a hearing on the alleged violations. Such hearing shall
27 take place no later than 45 calendar days after the receipt by
28 the Department of Labor of the request for a hearing. The
29 Department of Labor is empowered to promulgate, adopt, amend,
30 and rescind rules to govern the hearing procedure. No contract
31 shall be awarded to an employer or entity appearing on the list
32 until 4 years have elapsed from the date of the last violation.
33 The amount of the penalty, when finally determined, may be
34 recovered in a civil action filed in any circuit court by the
35 Director of Labor or a person aggrieved by a violation of this

1 Act or any rule adopted under this Act. In any civil action
2 brought by an aggrieved person pursuant to this Section, the
3 circuit court shall award the aggrieved person 10% of the
4 amount recovered. In such case the remaining amount recovered
5 shall be submitted to the Director of Labor.

6 Section 45. Willful violations.

7 (a) Whoever willfully violates any of the provisions of
8 this Act or any rule adopted under this Act or whoever
9 obstructs the Director of Labor, or his or her representatives,
10 or any other person authorized to inspect places of employment
11 under this Act shall be liable for penalties up to double the
12 statutory amount.

13 (b) Whoever willfully violates any of the provisions of
14 this Act or any rule adopted under this Act shall be liable to
15 the employee for punitive damages in an amount equal to the
16 penalties assessed in subsection (a) of this Section.

17 (c) The Director may promulgate rules for the collection of
18 these penalties. The penalty shall be imposed in cases in which
19 an employer or entity's conduct is proven by a preponderance of
20 the evidence to be willful. The penalty may be recovered in a
21 civil action brought by the Director of Labor in any circuit
22 court. In any such action, the Director of Labor shall be
23 represented by the Attorney General.

24 Section 50. Employee Classification Fund. All moneys
25 received by the Department as fees and civil penalties under
26 this Act shall be deposited into the Employee Classification
27 Fund and shall be used, subject to appropriation by the General
28 Assembly, by the Department for administration, investigation,
29 and other expenses incurred in carrying out its powers and
30 duties under this Act. The Department shall hire as many
31 investigators as may be necessary to carry out the purposes of
32 this Act. Any moneys in the Fund at the end of a fiscal year in
33 excess of those moneys necessary for the Department to carry
34 out its powers and duties under this Act shall be available to

1 the Department for the next fiscal year for any of the
2 Department's duties.

3 Section 55. Retaliation.

4 (a) It is a violation of this Act for an employer or
5 entity, or any agent of an employer or entity, to retaliate
6 through discharge or in any other manner against any person for
7 exercising any rights granted under this Act. Such retaliation
8 shall subject an employer or entity to civil penalties pursuant
9 to this Act or a private cause of action.

10 (b) It is a violation of this Act for an employer or entity
11 to retaliate against a person for:

12 (1) making a complaint to an employer or entity, to a
13 co-worker, to a community organization, before a public
14 hearing, or to a State or federal agency that rights
15 guaranteed under this Act have been violated;

16 (2) causing to be instituted any proceeding under or
17 related to this Act; or

18 (3) testifying or preparing to testify in an
19 investigation or proceeding under this Act.

20 Section 60. Private right of action.

21 (a) A person aggrieved by a violation of this Act or any
22 rule adopted under this Act by an employer or entity may file
23 suit in circuit court, in the county where the alleged offense
24 occurred or where any person who is party to the action
25 resides, without regard to exhaustion of any alternative
26 administrative remedies provided in this Act. Actions may be
27 brought by one or more persons for and on behalf of themselves
28 and other persons similarly situated. A person whose rights
29 have been violated under this Act by an employer or entity is
30 entitled to collect:

31 (1) the amount of any wages, salary, employment
32 benefits, or other compensation denied or lost to the
33 person by reason of the violation, plus an equal amount in
34 liquidated damages;

1 (2) compensatory damages and an amount up to \$500 for
2 each violation of this Act or any rule adopted under this
3 Act;

4 (3) in the case of unlawful retaliation, all legal or
5 equitable relief as may be appropriate; and

6 (4) attorney's fees and costs.

7 (b) The right of an aggrieved person to bring an action
8 under this Section terminates upon the passing of 3 years from
9 the final date of service to the employer or entity. This
10 limitations period is tolled if an employer or entity has
11 deterred a person's exercise of rights under this Act by
12 contacting or threatening to contact law enforcement agencies.

13 Section 65. Rulemaking. In addition to any rulemaking
14 required by any other provision of this Act, the Department may
15 adopt reasonable rules to implement and administer this Act.
16 For purposes of this Act, the General Assembly finds that the
17 adoption of rules to implement this Act is deemed an emergency
18 and necessary for the public interest and welfare.

19 Section 70. No waivers.

20 (a) There shall be no waiver of any provision of this Act.

21 (b) It is a Class C misdemeanor for an employer to attempt
22 to induce any individual to waive any provision of this Act.

23 Section 75. Cooperation. The Department of Labor, the
24 Department of Employment Security, the Department of Revenue,
25 and the Illinois Workers' Compensation Commission shall
26 cooperate under this Act by sharing information concerning any
27 suspected misclassification by an employer of one or more of
28 its employees as independent contractors.

29 Section 901. The Department of Employment Security Law of
30 the Civil Administrative Code of Illinois is amended by adding
31 Section 1005-160 as follows:

1 (20 ILCS 1005/1005-160 new)

2 Sec. 1005-160. Misclassification of employees as
3 independent contractors. The Department of Labor, the
4 Department of Employment Security, the Department of Revenue,
5 and the Illinois Workers' Compensation Commission shall
6 cooperate under the Employee Classification Act by sharing
7 information concerning any suspected misclassification by an
8 employer or entity, as defined in the Employee Classification
9 Act, of one or more employees as independent contractors.

10 Section 905. The Department of Labor Law of the Civil
11 Administrative Code of Illinois is amended by adding Section
12 1505-125 as follows:

13 (20 ILCS 1505/1505-125 new)

14 Sec. 1505-125. Misclassification of employees as
15 independent contractors. The Department of Labor, the
16 Department of Employment Security, the Department of Revenue,
17 and the Illinois Workers' Compensation Commission shall
18 cooperate under the Employee Classification Act by sharing
19 information concerning any suspected misclassification by an
20 employer or entity, as defined in the Employee Classification
21 Act, of one or more employees as independent contractors.

22 Section 910. The Department of Revenue Law of the Civil
23 Administrative Code of Illinois is amended by adding Section
24 2505-750 as follows:

25 (20 ILCS 2505/2505-750 new)

26 Sec. 2505-750. Misclassification of employees as
27 independent contractors. The Department of Labor, the
28 Department of Employment Security, the Department of Revenue,
29 and the Illinois Workers' Compensation Commission shall
30 cooperate under the Employee Classification Act by sharing
31 information concerning any suspected misclassification by an
32 employer or entity, as defined in the Employee Classification

1 Act, of one or more employees as independent contractors.

2 Section 915. The State Finance Act is amended by adding
3 Section 5.663 as follows:

4 (30 ILCS 105/5.663 new)

5 Sec. 5.663. The Employee Classification Fund.

6 Section 920. The Illinois Procurement Code is amended by
7 changing Section 50-70 as follows:

8 (30 ILCS 500/50-70)

9 Sec. 50-70. Additional provisions. This Code is subject to
10 applicable provisions of the following Acts:

11 (1) Article 33E of the Criminal Code of 1961;

12 (2) the Illinois Human Rights Act;

13 (3) the Discriminatory Club Act;

14 (4) the Illinois Governmental Ethics Act;

15 (5) the State Prompt Payment Act;

16 (6) the Public Officer Prohibited Activities Act; ~~and~~

17 (7) the Drug Free Workplace Act; and

18 (8) the Employee Classification Act.

19 (Source: P.A. 90-572, eff. 2-6-98.)

20 Section 925. The Workers' Compensation Act is amended by
21 adding Section 26.1 as follows:

22 (820 ILCS 305/26.1 new)

23 Sec. 26.1. Misclassification of employees as independent
24 contractors. The Department of Labor, the Department of
25 Employment Security, the Department of Revenue, and the
26 Illinois Workers' Compensation Commission shall cooperate
27 under the Employee Classification Act by sharing information
28 concerning any suspected misclassification by an employer or
29 entity, as defined in the Employee Classification Act, of one
30 or more employees as independent contractors.

1 Section 990. Severability. The provisions of this Act are
2 severable under Section 1.31 of the Statute on Statutes.

3 Section 999. Effective date. This Act takes effect July 1,
4 2006.