

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, 7, and 12 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 reason
11 of his employment, including allowances determined by the
12 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
24 year.

25 (d) "Employee" includes any individual permitted to work by
26 an employer in an occupation, but does not include any
27 individual permitted to work:

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

31 (2) As an employee employed in agriculture or
32 aquaculture (A) if such employee is employed by an employer

1 who did not, during any calendar quarter during the
2 preceding calendar year, use more than 500 man-days of
3 agricultural or aquacultural labor, (B) if such employee is
4 the parent, spouse or child, or other member of the
5 employer's immediate family, (C) if such employee (i) is
6 employed as a hand harvest laborer and is paid on a piece
7 rate basis in an operation which has been, and is
8 customarily and generally recognized as having been, paid
9 on a piece rate basis in the region of employment, (ii)
10 commutes daily from his permanent residence to the farm on
11 which he is so employed, and (iii) has been employed in
12 agriculture less than 13 weeks during the preceding
13 calendar year, (D) if such employee (other than an employee
14 described in clause (C) of this subparagraph): (i) is 16
15 years of age or under and is employed as a hand harvest
16 laborer, is paid on a piece rate basis in an operation
17 which has been, and is customarily and generally recognized
18 as having been, paid on a piece rate basis in the region of
19 employment, (ii) is employed on the same farm as his parent
20 or person standing in the place of his parent, and (iii) is
21 paid at the same piece rate as employees over 16 are paid
22 on the same farm.

23 (3) In domestic service in or about a private home.

24 (4) As an outside salesman.

25 (5) As a member of a religious corporation or
26 organization.

27 (6) At an accredited Illinois college or university
28 employed by the college or university at which he is a
29 student who is covered under the provisions of the Fair
30 Labor Standards Act of 1938, as heretofore or hereafter
31 amended.

32 (7) For a motor carrier and with respect to whom the
33 U.S. Secretary of Transportation has the power to establish
34 qualifications and maximum hours of service under the
35 provisions of Title 49 U.S.C. or the State of Illinois
36 under Section 18b-105 (Title 92 of the Illinois

1 Administrative Code, Part 395 - Hours of Service of
2 Drivers) of the Illinois Vehicle Code.

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

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

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

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

14 (Source: P.A. 91-357, eff. 7-29-99.)

15 (820 ILCS 105/7) (from Ch. 48, par. 1007)

16 Sec. 7. The Director or his authorized representatives have
17 the authority to:

18 (a) Investigate and gather data regarding the wages, hours
19 and other conditions and practices of employment in any
20 industry subject to this Act, and may enter and inspect such
21 places and such records (and make such transcriptions thereof)
22 at reasonable times during regular business hours, not
23 including lunch time at a restaurant, question such employees,
24 and investigate such facts, conditions, practices or matters as
25 he may deem necessary or appropriate to determine whether any
26 person has violated any provision of this Act, or which may aid
27 in the enforcement of this Act.

28 (b) Require from any employer full and correct statements
29 and reports in writing, including sworn statements, at such
30 times as the Director may deem necessary, of the wages, hours,
31 names, addresses, and other information pertaining to his
32 employees as he may deem necessary for the enforcement of this
33 Act.

34 (c) Require by subpoena the attendance and testimony of
35 witnesses and the production of all books, records, and other

1 evidence relative to a matter under investigation or hearing.
2 The subpoena shall be signed and issued by the Director or his
3 or her authorized representative. If a person fails to comply
4 with any subpoena lawfully issued under this Section or a
5 witness refuses to produce evidence or testify to any matter
6 regarding which he or she may be lawfully interrogated, the
7 court shall, upon application of the Director or his or her
8 authorized representative, compel obedience by proceedings for
9 contempt.

10 (Source: P.A. 77-1451.)

11 (820 ILCS 105/12) (from Ch. 48, par. 1012)

12 Sec. 12. (a) If any employee is paid by his employer less
13 than the wage to which he is entitled under the provisions of
14 this Act, the employee may recover in a civil action the amount
15 of any such underpayments together with costs and such
16 reasonable attorney's fees as may be allowed by the Court, and
17 damages of 2% of the amount of any such underpayments for each
18 month following the date of payment during which such
19 underpayments remain unpaid. Any ~~any~~ agreement between the
20 employee ~~him~~ and the ~~his~~ employer to work for less than such
21 wage is no defense to such action. At the request of the
22 employee or on motion of the Director of Labor, the Department
23 of Labor may make an assignment of such wage claim in trust for
24 the assigning employee and may bring any legal action necessary
25 to collect such claim, and the employer shall be required to
26 pay the costs incurred in collecting such claim. Every such
27 action shall be brought within 3 years from the date of the
28 underpayment. Such employer shall be liable to the Department
29 of Labor for 20% of the total employer's underpayment and shall
30 be additionally liable to the employee for ~~punitive~~ damages in
31 the amount of 2% of the amount of any such underpayments for
32 each month following the date of payment during which such
33 underpayments remain unpaid. Such employer shall be
34 additionally liable to the Department of Labor for up to 20% of
35 the total employer's underpayment where the employer's conduct

1 is proven by a preponderance of the evidence to be willful,
2 repeated, or with reckless disregard of this Act or any rule
3 adopted under this Act. These penalties and damages ~~The~~
4 ~~Director may promulgate rules for the collection of these~~
5 ~~penalties. The amount of a penalty may be determined, and the~~
6 ~~penalty may be assessed, through an administrative hearing. The~~
7 ~~penalty~~ may be recovered in a civil action brought by the
8 Director of Labor in any circuit court. ~~The penalty shall be~~
9 ~~imposed in cases in which an employer's conduct is proven by a~~
10 ~~preponderance of the evidence to be willful.~~ In any such
11 action, the Director of Labor shall be represented by the
12 Attorney General.

13 (b) The Director is authorized to supervise the payment of
14 the unpaid minimum wages and the unpaid overtime compensation
15 owing to any employee or employees under Sections 4 and 4a of
16 this Act and may bring any legal action necessary to recover
17 the amount of the unpaid minimum wages and unpaid overtime
18 compensation and an equal additional amount as ~~punitive~~
19 damages, and the employer shall be required to pay the costs
20 incurred in collecting such claim. Such ~~and the~~ employer shall
21 be additionally liable to the Department of Labor for up to 20%
22 of the total employer's underpayment where the employer's
23 conduct is proven by a preponderance of the evidence to be
24 willful, repeated, or with reckless disregard of this Act or
25 any rule adopted under this Act. ~~be required to pay the costs.~~
26 The action shall be brought within 5 years from the date of the
27 failure to pay the wages or compensation. Any sums thus
28 recovered by the Director on behalf of an employee pursuant to
29 this subsection shall be paid to the employee or employees
30 affected. Any sums which, more than one year after being thus
31 recovered, the Director is unable to pay to an employee shall
32 be deposited into the General Revenue Fund.

33 (Source: P.A. 92-392, eff. 1-1-02.)

34 Section 10. The Illinois Wage Payment and Collection Act is
35 amended by changing Sections 2 and 14 as follows:

1 (820 ILCS 115/2) (from Ch. 48, par. 39m-2)

2 Sec. 2. For all employees, other than separated employees,
3 "wages" shall be defined as any compensation owed an employee
4 by an employer pursuant to an employment contract or agreement
5 between the 2 parties, whether the amount is determined on a
6 time, task, piece, or any other basis of calculation. Payments
7 to separated employees shall be termed "final compensation" and
8 shall be defined as wages, salaries, earned commissions, earned
9 bonuses, and the monetary equivalent of earned vacation and
10 earned holidays, and any other compensation owed the employee
11 by the employer pursuant to an employment contract or agreement
12 between the 2 parties. Where an employer is legally committed
13 through a collective bargaining agreement or otherwise to make
14 contributions to an employee benefit, trust or fund on the
15 basis of a certain amount per hour, day, week or other period
16 of time, the amount due from the employer to such employee
17 benefit, trust, or fund shall be defined as "wage supplements",
18 subject to the wage collection provisions of this Act.

19 As used in this Act, the term "employer" shall include any
20 individual, partnership, association, corporation, limited
21 liability company, business trust, employment and labor
22 placement agencies where wage payments are made directly or
23 indirectly by the agency or business for work undertaken by
24 employees under hire to a third party pursuant to a contract
25 between the business or agency with the third party, or any
26 person or group of persons acting directly or indirectly in the
27 interest of an employer in relation to an employee, for which
28 one or more persons is gainfully employed.

29 As used in this Act, the term "employee" shall include any
30 individual permitted to work by an employer in an occupation,
31 but shall not include any individual:

32 (1) who has been and will continue to be free from
33 control and direction over the performance of his work,
34 both under his contract of service with his employer and in
35 fact; and

1 (2) who performs work which is either outside the usual
2 course of business or is performed outside all of the
3 places of business of the employer unless the employer is
4 in the business of contracting with third parties for the
5 placement of employees; and

6 (3) who is in an independently established trade,
7 occupation, profession or business.

8 (Source: P.A. 89-364, eff. 8-18-95; 89-626, eff. 8-9-96.)

9 (820 ILCS 115/14) (from Ch. 48, par. 39m-14)

10 Sec. 14. (a) Any employer or any agent of an employer, who,
11 being able to pay wages, final compensation, or wage
12 supplements and being under a duty to pay, wilfully refuses to
13 pay as provided in this Act, or falsely denies the amount or
14 validity thereof or that the same is due, with intent to secure
15 for himself or other person any underpayment of such
16 indebtedness or with intent to annoy, harass, oppress, hinder,
17 delay or defraud the person to whom such indebtedness is due,
18 upon conviction, is guilty of a Class C misdemeanor. Each day
19 during which any violation of this Act continues shall
20 constitute a separate and distinct offense.

21 (b) Any employer who has been demande~~ordered~~ by the
22 Director of Labor or ordered by the court to pay wages due an
23 employee and who shall fail to do so within 15 days after such
24 demand or order is entered shall be liable to pay a penalty of
25 1% per calendar day to the employee for each day of delay in
26 paying such wages to the employee up to an amount equal to
27 twice the sum of unpaid wages due the employee.

28 (c) Any employer, or any agent of an employer, who
29 knowingly discharges or in any other manner knowingly
30 discriminates against any employee because that employee has
31 made a complaint to his employer, or to the Director of Labor
32 or his authorized representative, that he or she has not been
33 paid in accordance with the provisions of this Act, or because
34 that employee has caused to be instituted any proceeding under
35 or related to this Act, or because that employee has testified

1 or is about to testify in an investigation or proceeding under
2 this Act, is guilty, upon conviction, of a Class C misdemeanor.
3 (Source: P.A. 83-202.)

4 Section 99. Effective date. This Act takes effect upon
5 becoming law.