

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 may, 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 up to 20% of the total employer's underpayment  
30 where the employer's conduct is proven by a preponderance of  
31 the evidence to be willful, repeated, or with reckless  
32 disregard of this Act or any rule adopted under this Act. Such  
33 employer ~~and~~ shall be additionally liable to the employee for  
34 punitive damages in the amount of 2% of the amount of any such  
35 underpayments for each month following the date of payment

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

11 If an employee collects damages of 2% of the amount of  
12 underpayments as a result of an action brought by the Director  
13 of Labor, the employee may not also collect those damages in a  
14 private action brought by the employee for the same violation.  
15 If an employee collects damages of 2% of the amount of  
16 underpayments in a private action brought by the employee, the  
17 employee may not also collect those damages as a result of an  
18 action brought by the Director of Labor for the same violation.

19 (b) If an employee has not collected damages under  
20 subsection (a) for the same violation, the ~~The~~ Director is  
21 authorized to supervise the payment of the unpaid minimum wages  
22 and the unpaid overtime compensation owing to any employee or  
23 employees under Sections 4 and 4a of this Act and may bring any  
24 legal action necessary to recover the amount of the unpaid  
25 minimum wages and unpaid overtime compensation and an equal  
26 additional amount as ~~punitive~~ damages, and the employer shall  
27 be required to pay the costs incurred in collecting such claim.  
28 Such ~~and the~~ employer shall be additionally liable to the  
29 Department of Labor for up to 20% of the total employer's  
30 underpayment where the employer's conduct is proven by a  
31 preponderance of the evidence to be willful, repeated, or with  
32 reckless disregard of this Act or any rule adopted under this  
33 Act. ~~be required to pay the costs.~~ The action shall be brought  
34 within 5 years from the date of the failure to pay the wages or  
35 compensation. Any sums thus recovered by the Director on behalf  
36 of an employee pursuant to this subsection shall be paid to the

1 employee or employees affected. Any sums which, more than one  
2 year after being thus recovered, the Director is unable to pay  
3 to an employee shall be deposited into the General Revenue  
4 Fund.

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

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

8 (820 ILCS 115/2) (from Ch. 48, par. 39m-2)

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

26 As used in this Act, the term "employer" shall include any  
27 individual, partnership, association, corporation, limited  
28 liability company, business trust, employment and labor  
29 placement agencies where wage payments are made directly or  
30 indirectly by the agency or business for work undertaken by  
31 employees under hire to a third party pursuant to a contract  
32 between the business or agency with the third party, or any  
33 person or group of persons acting directly or indirectly in the  
34 interest of an employer in relation to an employee, for which

1 one or more persons is gainfully employed.

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

5 (1) who has been and will continue to be free from  
6 control and direction over the performance of his work,  
7 both under his contract of service with his employer and in  
8 fact; and

9 (2) who performs work which is either outside the usual  
10 course of business or is performed outside all of the  
11 places of business of the employer unless the employer is  
12 in the business of contracting with third parties for the  
13 placement of employees; and

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

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

17 (820 ILCS 115/14) (from Ch. 48, par. 39m-14)

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

29 (b) Any employer who has been demande~~d~~ordered by the  
30 Director of Labor or ordered by the court to pay wages due an  
31 employee and who shall fail to do so within 15 days after such  
32 demand or order is entered shall be liable to pay a penalty of  
33 1% per calendar day to the employee for each day of delay in  
34 paying such wages to the employee up to an amount equal to  
35 twice the sum of unpaid wages due the employee.

1           (c) Any employer, or any agent of an employer, who  
2 knowingly discharges or in any other manner knowingly  
3 discriminates against any employee because that employee has  
4 made a complaint to his employer, or to the Director of Labor  
5 or his authorized representative, that he or she has not been  
6 paid in accordance with the provisions of this Act, or because  
7 that employee has caused to be instituted any proceeding under  
8 or related to this Act, or because that employee has testified  
9 or is about to testify in an investigation or proceeding under  
10 this Act, is guilty, upon conviction, of a Class C misdemeanor.  
11 (Source: P.A. 83-202.)

12           Section 99. Effective date. This Act takes effect upon  
13 becoming law.