

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 "Construction" means any constructing, altering,
11 reconstructing, repairing, rehabilitating, refinishing,
12 refurbishing, remodeling, remediating, renovating, custom
13 fabricating, maintenance, landscaping, improving, wrecking,
14 painting, decorating, demolishing, and adding to or
15 subtracting from any building, structure, highway, roadway,
16 street, bridge, alley, sewer, ditch, sewage disposal plant,
17 water works, parking facility, railroad, excavation or other
18 structure, project, development, real property or improvement,
19 or to do any part thereof, whether or not the performance of
20 the work herein described involves the addition to, or
21 fabrication into, any structure, project, development, real
22 property or improvement herein described of any material or

1 article of merchandise. Construction shall also include moving
2 construction related materials on the job site to or from the
3 job site.

4 "Contractor" means any sole proprietor, partnership, firm,
5 corporation, limited liability company, association or other
6 legal entity permitted by law to do business within the State
7 of Illinois who engages in construction as defined in this Act.

8 "Contractor" includes a general contractor and a
9 subcontractor.

10 "Department" means the Department of Labor.

11 "Director" means the Director of the Department of Labor.

12 "Employer" means any contractor that employs individuals
13 deemed employees under Section 10 of this Act; however,
14 "employer" does not include (i) the State of Illinois or its
15 officers, agencies, or political subdivisions or (ii) the
16 federal government.

17 "Entity" means any contractor for which an individual is
18 performing services and is not classified as an employee under
19 Section 10 of this Act; however, "entity" does not include (i)
20 the State of Illinois or its officers, agencies, or political
21 subdivisions or (ii) the federal government.

22 "Interested party" means a person with an interest in
23 compliance with this Act.

24 "Performing services" means the performance of any
25 constructing, altering, reconstructing, repairing,
26 rehabilitating, refinishing, refurbishing, remodeling,

1 remediating, renovating, custom fabricating, maintenance,
2 landscaping, improving, wrecking, painting, decorating,
3 demolishing, and adding to or subtracting from any building,
4 structure, highway, roadway, street, bridge, alley, sewer,
5 ditch, sewage disposal plant, water works, parking facility,
6 railroad, excavation or other structure, project, development,
7 real property or improvement, or to do any part thereof,
8 whether or not the performance of the work herein described
9 involves the addition to, or fabrication into, any structure,
10 project, development, real property or improvement herein
11 described of any material or article of merchandise.
12 Construction shall also include moving construction related
13 materials on the job site to or from the job site.

14 Section 10. Applicability; status of individuals
15 performing service.

16 (a) For the purposes of this Act, an individual performing
17 services for a contractor is deemed to be an employee of the
18 employer except as provided in subsections (b) and (c) of this
19 Section.

20 (b) An individual performing services for a contractor is
21 deemed to be an employee of the contractor unless it is shown
22 that:

23 (1) the individual has been and will continue to be
24 free from control or direction over the performance of the
25 service for the contractor, both under the individual's

1 contract of service and in fact;

2 (2) the service performed by the individual is outside
3 the usual course of services performed by the contractor;
4 and

5 (3) the individual is engaged in an independently
6 established trade, occupation, profession or business; or

7 (4) the individual is deemed a legitimate sole
8 proprietor or partnership under subsection (c) of this
9 Section.

10 (c) The sole proprietor or partnership performing services
11 for a contractor as a subcontractor is deemed legitimate if it
12 is shown that:

13 (1) the sole proprietor or partnership is performing
14 the service free from the direction or control over the
15 means and manner of providing the service, subject only to
16 the right of the contractor for whom the service is
17 provided to specify the desired result;

18 (2) the sole proprietor or partnership is not subject
19 to cancellation or destruction upon severance of the
20 relationship with the contractor;

21 (3) the sole proprietor or partnership has a
22 substantial investment of capital in the sole
23 proprietorship or partnership beyond ordinary tools and
24 equipment and a personal vehicle;

25 (4) the sole proprietor or partnership owns the capital
26 goods and gains the profits and bears the losses of the

1 sole proprietorship or partnership;

2 (5) the sole proprietor or partnership makes its
3 services available to the general public or the business
4 community on a continuing basis;

5 (6) the sole proprietor or partnership includes
6 services rendered on a Federal Income Tax Schedule as an
7 independent business or profession;

8 (7) the sole proprietor or partnership performs
9 services for the contractor under the sole
10 proprietorship's or partnership's name;

11 (8) when the services being provided require a license
12 or permit, the sole proprietor or partnership obtains and
13 pays for the license or permit in the sole proprietorship's
14 or partnership's name;

15 (9) the sole proprietor or partnership furnishes the
16 tools and equipment necessary to provide the service;

17 (10) if necessary, the sole proprietor or partnership
18 hires its own employees without contractor approval, pays
19 the employees without reimbursement from the contractor
20 and reports the employees' income to the Internal Revenue
21 Service;

22 (11) the contractor does not represent the sole
23 proprietorship or partnership as an employee of the
24 contractor to its customers; and

25 (12) the sole proprietor or partnership has the right
26 to perform similar services for others on whatever basis

1 and whenever it chooses.

2 (d) Where a sole proprietor or partnership performing
3 services for a contractor as a subcontractor is deemed not
4 legitimate under subsection (c) of this Section, the sole
5 proprietorship or partnership shall be deemed an individual for
6 purposes of this Act.

7 (e) Subcontractors or lower tiered contractors are subject
8 to all provisions of this Act.

9 (f) A contractor shall not be liable under this Act for any
10 subcontractor's failure to properly classify persons
11 performing services as employees, nor shall a subcontractor be
12 liable for any lower tiered subcontractor's failure to properly
13 classify persons performing services as employees.

14 Section 15. Notice.

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

18 (b) An entity for whom one or more individuals perform
19 services who are not classified as employees under Section 10
20 of this Act shall post and keep posted, in a conspicuous place
21 on each job site where those individuals perform services and
22 in each of its offices, a notice in English, Spanish, and
23 Polish, prepared by the Department, summarizing the
24 requirements of this Act. The Department shall furnish copies
25 of summaries without charge to entities upon request.

1 Section 20. Failure to properly designate or classify
2 individuals performing services as employees. It is a violation
3 of this Act for an employer or entity not to designate an
4 individual as an employee under Section 10 of this Act unless
5 the employer or entity satisfies the provisions of Section 10
6 of this Act.

7 Section 25. Enforcement.

8 (a) Any interested party may file a complaint with the
9 Department against an entity or employer covered under this Act
10 if there is a reasonable belief that the entity or employer is
11 in violation of this Act. It shall be the duty of the
12 Department to enforce the provisions of this Act. The
13 Department shall have the power to conduct investigations in
14 connection with the administration and enforcement of this Act
15 and any investigator with the Department shall be authorized to
16 visit and inspect, at all reasonable times, any places covered
17 by this Act and shall be authorized to inspect, at all
18 reasonable times, documents related to the determination of
19 whether an individual is an employee under Section 10 of this
20 Act. The Director of Labor or his or her representative may
21 compel, by subpoena, the attendance and testimony of witnesses
22 and the production of books, payrolls, records, papers, and
23 other evidence in any investigation and may administer oaths to
24 witnesses.

1 (b) Whenever the Department believes upon investigation
2 that there has been a violation of any of the provisions of
3 this Act or any rules or regulations promulgated under this
4 Act, the Department may: (i) issue and cause to be served on
5 any party an order to cease and desist from further violation
6 of the Act, (ii) take affirmative or other action as deemed
7 reasonable to eliminate the effect of the violation, (iii)
8 collect the amount of any wages, salary, employment benefits,
9 or other compensation denied or lost to the individual, and
10 (iv) assess any civil penalty allowed by this Act. The civil
11 penalties assessed by the Department as well as any other
12 relief requested by the Department shall be recoverable in an
13 action brought in the name of the people of the State of
14 Illinois by the Attorney General.

15 Section 30. Attorney General; State's Attorneys. Criminal
16 violations of this Act shall be prosecuted by the Attorney
17 General or the appropriate State's Attorney. The Department
18 shall refer matters to the Attorney General and the appropriate
19 State's Attorney upon determining that a criminal violation may
20 have occurred. In all other proceedings the Department shall be
21 represented by the Attorney General's Office.

22 Section 35. Contempt. Whenever it appears that any employer
23 or entity has violated a valid order of the Department issued
24 under this Act, the Director of Labor may commence an action

1 and obtain from the court an order commanding the employer or
2 entity to obey the order of the Department or be adjudged
3 guilty of contempt of court and punished accordingly.

4 Section 40. Penalties. An employer or entity that violates
5 any of the provisions of this Act or any rule adopted under
6 this Act shall be subject to a civil penalty not to exceed
7 \$1,500 for each violation found in the first audit by the
8 Department. Following a first audit, an employer or entity
9 shall be subject to a civil penalty not to exceed \$2,500 for
10 each repeat violation found by the Department within a 5 year
11 period. For purposes of this Section, each violation of this
12 Act for each person and for each day the violation continues
13 shall constitute a separate and distinct violation. In
14 determining the amount of a penalty, the Director shall
15 consider the appropriateness of the penalty to the employer or
16 entity charged, upon the determination of the gravity of the
17 violations. The amount of the penalty, when finally determined,
18 may be recovered in a civil action filed in any circuit court
19 by the Director of Labor, or a person aggrieved by a violation
20 of this Act or any rule adopted under this Act. In any civil
21 action brought by an interested party pursuant to this Section,
22 the circuit court shall award the interested party 10% of the
23 amount recovered. In such case, the remaining amount recovered
24 shall be submitted to the Director of Labor. Any uncollected
25 amount shall be subject to the provisions of the Illinois State

1 Collection Act of 1986.

2 Section 42. Debarments. For any second or subsequent
3 violation determined by the Department which is within 5 years
4 of an earlier violation, the Department shall add the employer
5 or entity's name to a list to be posted on the Department's
6 official website. Upon such notice, the Department shall notify
7 the violating employer or entity. No state contract shall be
8 awarded to an employer or entity appearing on the list until 4
9 years have elapsed from the date of the last violation.

10 Section 45. Willful violations.

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

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

21 (c) The penalty shall be imposed in cases in which an
22 employer or entity's conduct is proven by a preponderance of
23 the evidence to be willful. The penalty may be recovered in a
24 civil action brought by the Director of Labor in any circuit

1 court. In any such action, the Director of Labor shall be
2 represented by the Attorney General. Any uncollected amount
3 shall be subject to the provisions of the Illinois State
4 Collection Act of 1986.

5 (d) An entity or employer that willfully violates any
6 provision of this Act or any rule adopted under this Act
7 commits a Class C misdemeanor. An entity or employer that
8 commits a second or subsequent violation within a 5 year period
9 commits a Class 4 felony.

10 Section 50. Employee Classification Fund. All moneys
11 received by the Department as fees and civil penalties under
12 this Act shall be deposited into the Employee Classification
13 Fund and shall be used, subject to appropriation by the General
14 Assembly, by the Department for administration, investigation,
15 and other expenses incurred in carrying out its powers and
16 duties under this Act. The Department shall hire as many
17 investigators and other personnel as may be necessary to carry
18 out the purposes of this Act. Any moneys in the Fund at the end
19 of a fiscal year in excess of those moneys necessary for the
20 Department to carry out its powers and duties under this Act
21 shall be available to the Department for the next fiscal year
22 for any of the Department's duties.

23 Section 55. Retaliation.

24 (a) It is a violation of this Act for an employer or

1 entity, or any agent of an employer or entity, to retaliate
2 through discharge or in any other manner against any person for
3 exercising any rights granted under this Act. Such retaliation
4 shall subject an employer or entity to civil penalties pursuant
5 to this Act or a private cause of action, or both.

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

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

12 (2) causing to be instituted any proceeding under or
13 related to this Act; or

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

16 Section 60. Private right of action.

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

1 or entity is entitled to collect:

2 (1) the amount of any wages, salary, employment
3 benefits, or other compensation denied or lost to the
4 person by reason of the violation, plus an equal amount in
5 liquidated damages;

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

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

11 (4) attorney's fees and costs.

12 (b) The right of an interested party or aggrieved person to
13 bring an action under this Section terminates upon the passing
14 of 3 years from the final date of performing services to the
15 employer or entity. This limitations period is tolled if an
16 employer or entity has deterred a person's exercise of rights
17 under this Act.

18 Section 65. Rulemaking. The Department may adopt
19 reasonable rules to implement and administer this Act. For
20 purposes of this Act, the General Assembly finds that the
21 adoption of rules to implement this Act is deemed an emergency
22 and necessary for the public interest and welfare.

23 Section 70. No waivers.

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

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

3 Section 75. Cooperation. 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 this Act by sharing information concerning any
7 suspected misclassification by an employer or entity of one or
8 more of its employees as independent contractors. Upon
9 determining that an employer or entity has misclassified
10 employees as independent contractors in violation of this Act,
11 the Department shall notify the Department of Employment
12 Security, the Department of Revenue, the Office of the State
13 Comptroller, and the Illinois Workers' Compensation Commission
14 who shall be obliged to check such employer or entity's
15 compliance with their laws, utilizing their own definitions,
16 standards, and procedures.

17 Section 80. Effect of Final Order. Any finding made
18 pursuant to this Act is for the purpose of enforcing this Act
19 and may not be admissible or binding against a party in any
20 other proceeding.

21 Section 900. The State Comptroller Act is amended by adding
22 Section 9.06 as follows:

1 (15 ILCS 405/9.06 new)

2 Sec. 9.06. Misclassification of employees as independent
3 contractors. The Department of Labor, the Department of
4 Employment Security, the Department of Revenue, the Office of
5 the State Comptroller, and the Illinois Workers' Compensation
6 Commission shall cooperate under the Employee Classification
7 Act by sharing information concerning any suspected
8 misclassification by an employer or entity, as defined in the
9 Employee Classification Act, or one or more employees as
10 independent contractors.

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

14 (20 ILCS 1005/1005-160 new)

15 Sec. 1005-160. Misclassification of employees as
16 independent contractors. The Department of Labor, the
17 Department of Employment Security, the Department of Revenue,
18 the Office of the State Comptroller, and the Illinois Workers'
19 Compensation Commission shall cooperate under the Employee
20 Classification Act by sharing information concerning any
21 suspected misclassification by an employer or entity, as
22 defined in the Employee Classification Act, of one or more
23 employees as independent contractors.

1 Section 905. The Department of Labor Law of the Civil
2 Administrative Code of Illinois is amended by adding Section
3 1505-125 as follows:

4 (20 ILCS 1505/1505-125 new)

5 Sec. 1505-125. Misclassification of employees as
6 independent contractors. The Department of Labor, the
7 Department of Employment Security, the Department of Revenue,
8 the Office of the State Comptroller and the Illinois Workers'
9 Compensation Commission shall cooperate under the Employee
10 Classification Act by sharing information concerning any
11 suspected misclassification by an employer or entity, as
12 defined in the Employee Classification Act, of one or more
13 employees as independent contractors.

14 Section 910. The Department of Revenue Law of the Civil
15 Administrative Code of Illinois is amended by adding Section
16 2505-750 as follows:

17 (20 ILCS 2505/2505-750 new)

18 Sec. 2505-750. Misclassification of employees as
19 independent contractors. The Department of Labor, the
20 Department of Employment Security, the Department of Revenue,
21 the Office of the State Comptroller, and the Illinois Workers'
22 Compensation Commission shall cooperate under the Employee
23 Classification Act by sharing information concerning any

1 suspected misclassification by an employer or entity, as
2 defined in the Employee Classification Act, of one or more
3 employees as independent contractors.

4 Section 915. The State Finance Act is amended by adding
5 Section 5.675 as follows:

6 (30 ILCS 105/5.675 new)

7 Sec. 5.675. The Employee Classification Fund.

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

10 (30 ILCS 500/50-70)

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

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

14 (2) the Illinois Human Rights Act;

15 (3) the Discriminatory Club Act;

16 (4) the Illinois Governmental Ethics Act;

17 (5) the State Prompt Payment Act;

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

19 (7) the Drug Free Workplace Act; and-

20 (8) the Employee Classification Act.

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

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

3 (820 ILCS 305/26.1 new)

4 Sec. 26.1. Misclassification of employees as independent
5 contractors. The Department of Labor, the Department of
6 Employment Security, the Department of Revenue, the Office of
7 the State Comptroller, and the Illinois Workers' Compensation
8 Commission shall cooperate under the Employee Classification
9 Act by sharing information concerning any suspected
10 misclassification by an employer or entity, as defined in the
11 Employee Classification Act, of one or more employees as
12 independent contractors.

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

15 Section 999. Effective date. This Act takes effect January
16 1, 2008.

1 INDEX

2 Statutes amended in order of appearance

3 New Act

4 15 ILCS 405/9.06 new

5 20 ILCS 1005/1005-160 new

6 20 ILCS 1505/1505-125 new

7 20 ILCS 2505/2505-750 new

8 30 ILCS 105/5.675 new

9 30 ILCS 500/50-70

10 820 ILCS 305/26.1 new