



## 97TH GENERAL ASSEMBLY

### State of Illinois

2011 and 2012

SB0068

Introduced 1/27/2011, by Sen. Ira I. Silverstein

#### SYNOPSIS AS INTRODUCED:

775 ILCS 5/2-101	from Ch. 68, par. 2-101
820 ILCS 105/3	from Ch. 48, par. 1003
820 ILCS 105/4a	from Ch. 48, par. 1004a
820 ILCS 140/2	from Ch. 48, par. 8b

Amends the Illinois Human Rights Act. Provides that the employment discrimination Article of the Act applies to domestic workers. Amends the Minimum Wage Law. Provides that the overtime provisions of the Law apply to domestic workers. Amends the One Day Rest In Seven Act. Provides that every person employed as a domestic worker shall be allowed at least 24 consecutive hours of rest in every calendar week. Provides that a domestic worker may voluntarily agree to work on such day of rest; provided that the worker is compensated at the overtime rate for all hours worked on such day of rest. Provides that the day of rest should, whenever possible, coincide with the traditional day reserved by the domestic worker for religious worship. Provides that after one year of work with the same employer a domestic worker shall be entitled to at least 3 days of rest in each calendar year at the regular rate of compensation.

LRB097 02709 RLC 42728 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

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 Illinois Human Rights Act is amended by  
5 changing Section 2-101 as follows:

6 (775 ILCS 5/2-101) (from Ch. 68, par. 2-101)

7 Sec. 2-101. Definitions. The following definitions are  
8 applicable strictly in the context of this Article.

9 (A) Employee.

10 (1) "Employee" includes:

11 (a) Any individual performing services for  
12 remuneration within this State for an employer;

13 (b) An apprentice;

14 (c) An applicant for any apprenticeship; ~~or~~

15 (d) A domestic worker.

16 (2) "Employee" does not include:

17 (a) (Blank) ~~Domestic servants in private homes;~~

18 (b) Individuals employed by persons who are not  
19 "employers" as defined by this Act;

20 (c) Elected public officials or the members of  
21 their immediate personal staffs;

22 (d) Principal administrative officers of the State  
23 or of any political subdivision, municipal corporation

1 or other governmental unit or agency;

2 (e) A person in a vocational rehabilitation  
3 facility certified under federal law who has been  
4 designated an evaluatee, trainee, or work activity  
5 client.

6 (B) Employer.

7 (1) "Employer" includes:

8 (a) Any person employing 15 or more employees  
9 within Illinois during 20 or more calendar weeks within  
10 the calendar year of or preceding the alleged  
11 violation;

12 (b) Any person employing one or more employees when  
13 a complainant alleges civil rights violation due to  
14 unlawful discrimination based upon his or her physical  
15 or mental handicap unrelated to ability or sexual  
16 harassment;

17 (c) The State and any political subdivision,  
18 municipal corporation or other governmental unit or  
19 agency, without regard to the number of employees;

20 (d) Any party to a public contract without regard  
21 to the number of employees;

22 (e) A joint apprenticeship or training committee  
23 without regard to the number of employees; ;

24 (f) Any person employing one or more domestic  
25 workers.

26 (2) "Employer" does not include any religious

1 corporation, association, educational institution,  
2 society, or non-profit nursing institution conducted by  
3 and for those who rely upon treatment by prayer through  
4 spiritual means in accordance with the tenets of a  
5 recognized church or religious denomination with respect  
6 to the employment of individuals of a particular religion  
7 to perform work connected with the carrying on by such  
8 corporation, association, educational institution, society  
9 or non-profit nursing institution of its activities.

10 (C) Employment Agency. "Employment Agency" includes both  
11 public and private employment agencies and any person, labor  
12 organization, or labor union having a hiring hall or hiring  
13 office regularly undertaking, with or without compensation, to  
14 procure opportunities to work, or to procure, recruit, refer or  
15 place employees.

16 (D) Labor Organization. "Labor Organization" includes any  
17 organization, labor union, craft union, or any voluntary  
18 unincorporated association designed to further the cause of the  
19 rights of union labor which is constituted for the purpose, in  
20 whole or in part, of collective bargaining or of dealing with  
21 employers concerning grievances, terms or conditions of  
22 employment, or apprenticeships or applications for  
23 apprenticeships, or of other mutual aid or protection in  
24 connection with employment, including apprenticeships or  
25 applications for apprenticeships.

26 (E) Sexual Harassment. "Sexual harassment" means any

1 unwelcome sexual advances or requests for sexual favors or any  
2 conduct of a sexual nature when (1) submission to such conduct  
3 is made either explicitly or implicitly a term or condition of  
4 an individual's employment, (2) submission to or rejection of  
5 such conduct by an individual is used as the basis for  
6 employment decisions affecting such individual, or (3) such  
7 conduct has the purpose or effect of substantially interfering  
8 with an individual's work performance or creating an  
9 intimidating, hostile or offensive working environment.

10 (F) Religion. "Religion" with respect to employers  
11 includes all aspects of religious observance and practice, as  
12 well as belief, unless an employer demonstrates that he is  
13 unable to reasonably accommodate an employee's or prospective  
14 employee's religious observance or practice without undue  
15 hardship on the conduct of the employer's business.

16 (G) Public Employer. "Public employer" means the State, an  
17 agency or department thereof, unit of local government, school  
18 district, instrumentality or political subdivision.

19 (H) Public Employee. "Public employee" means an employee of  
20 the State, agency or department thereof, unit of local  
21 government, school district, instrumentality or political  
22 subdivision. "Public employee" does not include public  
23 officers or employees of the General Assembly or agencies  
24 thereof.

25 (I) Public Officer. "Public officer" means a person who is  
26 elected to office pursuant to the Constitution or a statute or

1 ordinance, or who is appointed to an office which is  
2 established, and the qualifications and duties of which are  
3 prescribed, by the Constitution or a statute or ordinance, to  
4 discharge a public duty for the State, agency or department  
5 thereof, unit of local government, school district,  
6 instrumentality or political subdivision.

7 (J) Eligible Bidder. "Eligible bidder" means a person who,  
8 prior to a bid opening, has filed with the Department a  
9 properly completed, sworn and currently valid employer report  
10 form, pursuant to the Department's regulations. The provisions  
11 of this Article relating to eligible bidders apply only to bids  
12 on contracts with the State and its departments, agencies,  
13 boards, and commissions, and the provisions do not apply to  
14 bids on contracts with units of local government or school  
15 districts.

16 (K) Citizenship Status. "Citizenship status" means the  
17 status of being:

18 (1) a born U.S. citizen;

19 (2) a naturalized U.S. citizen;

20 (3) a U.S. national; or

21 (4) a person born outside the United States and not a  
22 U.S. citizen who is not an unauthorized alien and who is  
23 protected from discrimination under the provisions of  
24 Section 1324b of Title 8 of the United States Code, as now  
25 or hereafter amended.

26 (L) Domestic Worker. "Domestic worker" means a person

1 employed in a home or residence for the purpose of caring for a  
2 child, serving as a companion for a sick, convalescing, or  
3 elderly person, housekeeping, or for any other domestic service  
4 purpose. "Domestic worker" does not include any individual:

5 (1) working on a casual basis;

6 (2) who is engaged in providing companionship  
7 services, as defined in paragraph 15 of subdivision (a) of  
8 Section 213 of the Fair Labor Standards Act of 1938, and  
9 who is employed by an employer or agency other than the  
10 family or household using his or her services; or

11 (3) who is a relative through blood, marriage or  
12 adoption of:

13 (A) the employer; or

14 (B) the person for whom the worker is delivering  
15 services under a program funded or administered by  
16 federal, State, or local government.

17 (Source: P.A. 86-1343; 87-579; 87-666; 87-895.)

18 Section 10. The Minimum Wage Law is amended by changing  
19 Sections 3 and 4a as follows:

20 (820 ILCS 105/3) (from Ch. 48, par. 1003)

21 Sec. 3. As used in this Act:

22 (a) "Director" means the Director of the Department of  
23 Labor, and "Department" means the Department of Labor.

24 (b) "Wages" means compensation due to an employee by reason

1 of his employment, including allowances determined by the  
2 Director in accordance with the provisions of this Act for  
3 gratuities and, when furnished by the employer, for meals and  
4 lodging actually used by the employee.

5 (c) "Employer" includes any individual, partnership,  
6 association, corporation, limited liability company, business  
7 trust, governmental or quasi-governmental body, or any person  
8 or group of persons acting directly or indirectly in the  
9 interest of an employer in relation to an employee, for which  
10 one or more persons are gainfully employed on some day within a  
11 calendar year. An employer is subject to this Act in a calendar  
12 year on and after the first day in such calendar year in which  
13 he employs one or more persons, and for the following calendar  
14 year.

15 (d) "Employee" includes any individual permitted to work by  
16 an employer in an occupation, but does not include any  
17 individual permitted to work:

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

21 (2) As an employee employed in agriculture or  
22 aquaculture (A) if such employee is employed by an employer  
23 who did not, during any calendar quarter during the  
24 preceding calendar year, use more than 500 man-days of  
25 agricultural or aquacultural labor, (B) if such employee is  
26 the parent, spouse or child, or other member of the



1 employer's immediate family, (C) if such employee (i) is  
2 employed as a hand harvest laborer and is paid on a piece  
3 rate basis in an operation which has been, and is  
4 customarily and generally recognized as having been, paid  
5 on a piece rate basis in the region of employment, (ii)  
6 commutes daily from his permanent residence to the farm on  
7 which he is so employed, and (iii) has been employed in  
8 agriculture less than 13 weeks during the preceding  
9 calendar year, (D) if such employee (other than an employee  
10 described in clause (C) of this subparagraph): (i) is 16  
11 years of age or under and is employed as a hand harvest  
12 laborer, is paid on a piece rate basis in an operation  
13 which has been, and is customarily and generally recognized  
14 as having been, paid on a piece rate basis in the region of  
15 employment, (ii) is employed on the same farm as his parent  
16 or person standing in the place of his parent, and (iii) is  
17 paid at the same piece rate as employees over 16 are paid  
18 on the same farm.

19 (3) In domestic service in or about a private home,  
20 except as otherwise provided in Section 4a.

21 (4) As an outside salesman.

22 (5) As a member of a religious corporation or  
23 organization.

24 (6) At an accredited Illinois college or university  
25 employed by the college or university at which he is a  
26 student who is covered under the provisions of the Fair

1 Labor Standards Act of 1938, as heretofore or hereafter  
2 amended.

3 (7) For a motor carrier and with respect to whom the  
4 U.S. Secretary of Transportation has the power to establish  
5 qualifications and maximum hours of service under the  
6 provisions of Title 49 U.S.C. or the State of Illinois  
7 under Section 18b-105 (Title 92 of the Illinois  
8 Administrative Code, Part 395 - Hours of Service of  
9 Drivers) of the Illinois Vehicle Code.

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

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

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

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

21 (h) "Day camp" means a seasonal recreation program in  
22 operation for no more than 16 weeks intermittently throughout  
23 the calendar year, accommodating for profit or under  
24 philanthropic or charitable auspices, 5 or more children under  
25 18 years of age, not including overnight programs. The term  
26 "day camp" does not include a "day care agency", "child care

1 facility" or "foster family home" as licensed by the Illinois  
2 Department of Children and Family Services.

3 (i) "Domestic worker" means a person employed in a home or  
4 residence for the purpose of caring for a child, serving as a  
5 companion for a sick, convalescing, or elderly person,  
6 housekeeping, or for any other domestic service purpose.  
7 "Domestic worker" does not include any individual:

8 (1) working on a casual basis;

9 (2) who is engaged in providing companionship  
10 services, as defined in paragraph 15 of subdivision (a) of  
11 Section 213 of the Fair Labor Standards Act of 1938, and  
12 who is employed by an employer or agency other than the  
13 family or household using his or her services; or

14 (3) who is a relative through blood, marriage or  
15 adoption of:

16 (A) the employer; or

17 (B) the person for whom the worker is delivering  
18 services under a program funded or administered by  
19 federal, State, or local government.

20 (Source: P.A. 94-1025, eff. 7-14-06; 95-945, eff. 1-1-09.)

21 (820 ILCS 105/4a) (from Ch. 48, par. 1004a)

22 Sec. 4a. (1) Except as otherwise provided in this Section,  
23 no employer shall employ any of his employees for a workweek of  
24 more than 40 hours unless such employee receives compensation  
25 for his employment in excess of the hours above specified at a

1 rate not less than 1 1/2 times the regular rate at which he is  
2 employed.

3 (1.5) No employer who employs a domestic worker shall  
4 require the domestic worker to work more than 40 hours in a  
5 week, or 44 hours in a week for domestic workers who reside in  
6 the home of their employer unless they receive compensation for  
7 overtime work at a rate not less than 1 1/2 times the regular  
8 rate at which he or she is employed.

9 (2) The provisions of subsection (1) of this Section are  
10 not applicable to:

11 A. Any salesman or mechanic primarily engaged in  
12 selling or servicing automobiles, trucks or farm  
13 implements, if he is employed by a nonmanufacturing  
14 establishment primarily engaged in the business of selling  
15 such vehicles or implements to ultimate purchasers.

16 B. Any salesman primarily engaged in selling trailers,  
17 boats, or aircraft, if he is employed by a nonmanufacturing  
18 establishment primarily engaged in the business of selling  
19 trailers, boats, or aircraft to ultimate purchasers.

20 C. Any employer of agricultural labor, with respect to  
21 such agricultural employment.

22 D. Any employee of a governmental body excluded from  
23 the definition of "employee" under paragraph (e)(2)(C) of  
24 Section 3 of the Federal Fair Labor Standards Act of 1938.

25 E. Any employee employed in a bona fide executive,  
26 administrative or professional capacity, including any

1 radio or television announcer, news editor, or chief  
2 engineer, as defined by or covered by the Federal Fair  
3 Labor Standards Act of 1938 and the rules adopted under  
4 that Act, as both exist on March 30, 2003, but compensated  
5 at the amount of salary specified in subsections (a) and  
6 (b) of Section 541.600 of Title 29 of the Code of Federal  
7 Regulations as proposed in the Federal Register on March  
8 31, 2003 or a greater amount of salary as may be adopted by  
9 the United States Department of Labor. For bona fide  
10 executive, administrative, and professional employees of  
11 not-for-profit corporations, the Director may, by  
12 regulation, adopt a weekly wage rate standard lower than  
13 that provided for executive, administrative, and  
14 professional employees covered under the Fair Labor  
15 Standards Act of 1938, as now or hereafter amended.

16 F. Any commissioned employee as described in paragraph  
17 (i) of Section 7 of the Federal Fair Labor Standards Act of  
18 1938 and rules and regulations promulgated thereunder, as  
19 now or hereafter amended.

20 G. Any employment of an employee in the stead of  
21 another employee of the same employer pursuant to a  
22 worktime exchange agreement between employees.

23 H. Any employee of a not-for-profit educational or  
24 residential child care institution who (a) on a daily basis  
25 is directly involved in educating or caring for children  
26 who (1) are orphans, foster children, abused, neglected or

1 abandoned children, or are otherwise homeless children and  
2 (2) reside in residential facilities of the institution and  
3 (b) is compensated at an annual rate of not less than  
4 \$13,000 or, if the employee resides in such facilities and  
5 receives without cost board and lodging from such  
6 institution, not less than \$10,000.

7 I. Any employee employed as a crew member of any  
8 uninspected towing vessel, as defined by Section 2101(40)  
9 of Title 46 of the United States Code, operating in any  
10 navigable waters in or along the boundaries of the State of  
11 Illinois.

12 (3) Any employer may employ any employee for a period or  
13 periods of not more than 10 hours in the aggregate in any  
14 workweek in excess of the maximum hours specified in subsection  
15 (1) of this Section without paying the compensation for  
16 overtime employment prescribed in subsection (1) if during that  
17 period or periods the employee is receiving remedial education  
18 that:

19 (a) is provided to employees who lack a high school  
20 diploma or educational attainment at the eighth grade  
21 level;

22 (b) is designed to provide reading and other basic  
23 skills at an eighth grade level or below; and

24 (c) does not include job specific training.

25 (4) A governmental body is not in violation of subsection  
26 (1) if the governmental body provides compensatory time

1 pursuant to paragraph (o) of Section 7 of the Federal Fair  
2 Labor Standards Act of 1938, as now or hereafter amended, or is  
3 engaged in fire protection or law enforcement activities and  
4 meets the requirements of paragraph (k) of Section 7 or  
5 paragraph (b)(20) of Section 13 of the Federal Fair Labor  
6 Standards Act of 1938, as now or hereafter amended.

7 (Source: P.A. 92-623, eff. 7-11-02; 93-672, eff. 4-2-04.)

8 Section 15. The One Day Rest In Seven Act is amended by  
9 changing Section 2 as follows:

10 (820 ILCS 140/2) (from Ch. 48, par. 8b)

11 Sec. 2. Hours and days of rest in every calendar week.

12 (a) Every employer shall allow every employee except those  
13 specified in this Section at least twenty-four consecutive  
14 hours of rest in every calendar week in addition to the regular  
15 period of rest allowed at the close of each working day.

16 (b) Every person employed as a domestic worker as defined  
17 in Section 3 of the Minimum Wage Law shall be allowed at least  
18 24 consecutive hours of rest in every calendar week. This  
19 subsection (a) does not prohibit a domestic worker from  
20 voluntarily agreeing to work on such day of rest required by  
21 this subsection (a); provided that the worker is compensated at  
22 the overtime rate for all hours worked on such day of rest. The  
23 day of rest authorized under this subsection (a) should,  
24 whenever possible, coincide with the traditional day reserved

1 by the domestic worker for religious worship. In addition,  
2 after one year of work with the same employer a domestic worker  
3 shall be entitled to at least 3 days of rest in each calendar  
4 year at the regular rate of compensation.

5 (c) This Section does not apply to the following:

6 (1) Part-time employees whose total work hours for one  
7 employer during a calendar week do not exceed 20; and

8 (2) Employees needed in case of breakdown of machinery  
9 or equipment or other emergency requiring the immediate  
10 services of experienced and competent labor to prevent  
11 injury to person, damage to property, or suspension of  
12 necessary operation; and

13 (3) Employees employed in agriculture or coal mining;  
14 and

15 (4) Employees engaged in the occupation of canning and  
16 processing perishable agricultural products, if such  
17 employees are employed by an employer in such occupation on  
18 a seasonal basis and for not more than 20 weeks during any  
19 calendar year or 12 month period; and

20 (5) Employees employed as watchmen or security guards;  
21 and

22 (6) Employees who are employed in a bonafide executive,  
23 administrative, or professional capacity or in the  
24 capacity of an outside salesman, as defined in Section 12

25 (a) (1) of the federal Fair Labor Standards Act, as  
26 amended, and those employed as supervisors as defined in



1 Section 2 (11) of the National Labor Relations Act, as  
2 amended; and

3 (7) Employees who are employed as crew members of any  
4 uninspected towing vessel, as defined by Section 2101(40)  
5 of Title 46 of the United States Code, operating in any  
6 navigable waters in or along the boundaries of the State of  
7 Illinois.

8 (Source: P.A. 92-623, eff. 7-11-02.)