



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

SB1565

Introduced 2/9/2011, by Sen. Kimberly A. Lightford - Iris Y. Martinez - Jacqueline Y. Collins

SYNOPSIS AS INTRODUCED:

820 ILCS 105/3	from Ch. 48, par. 1003
820 ILCS 105/4	from Ch. 48, par. 1004
820 ILCS 105/4a	from Ch. 48, par. 1004a
820 ILCS 105/12	from Ch. 48, par. 1012

Amends the Minimum Wage Law. Provides for fewer limitations on the definition of "employee." Provides a procedure for increasing the minimum wage annually to restore the minimum wage to its historic level and thereafter increasing the minimum wage by the increase in the cost of living during the preceding year. Deletes language pertaining to temporary or irregular employees and employees under the age of 18. Provides for an increased amount of damages recoverable by an employee that is paid less than the wage to which he is entitled to under the Minimum Wage Law. Effective immediately.

LRB097 08781 AEK 48911 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 Minimum Wage Law is amended by changing
5 Sections 3, 4, 4a, 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

1 year.

2 (d) "Employee" includes any individual permitted to work by
3 an employer in an occupation, but does not include any
4 individual permitted to work:

5 (1) (Blank). ~~For an employer employing fewer than 4~~
6 ~~employees exclusive of the employer's parent, spouse or~~
7 ~~child or other members of his immediate family.~~

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

1 as having been, paid on a piece rate basis in the region of
2 employment, (ii) is employed on the same farm as his parent
3 or person standing in the place of his parent, and (iii) is
4 paid at the same piece rate as employees over 16 are paid
5 on the same farm.

6 (3) (Blank). ~~In domestic service in or about a private~~
7 ~~home.~~

8 (4) As an outside salesman.

9 (5) As a member of a religious corporation or
10 organization.

11 (6) At an accredited Illinois college or university
12 employed by the college or university at which he is a
13 student who is covered under the provisions of the Fair
14 Labor Standards Act of 1938, as heretofore or hereafter
15 amended.

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

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

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

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

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

8 (h) "Day camp" means a seasonal recreation program in
9 operation for no more than 16 weeks intermittently throughout
10 the calendar year, accommodating for profit or under
11 philanthropic or charitable auspices, 5 or more children under
12 18 years of age, not including overnight programs. The term
13 "day camp" does not include a "day care agency", "child care
14 facility" or "foster family home" as licensed by the Illinois
15 Department of Children and Family Services.

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

17 (820 ILCS 105/4) (from Ch. 48, par. 1004)

18 Sec. 4. (a)(1) Every employer shall pay to each of his
19 employees in every occupation wages of not less than \$2.30 per
20 hour or in the case of employees under 18 years of age wages of
21 not less than \$1.95 per hour, except as provided in Sections 5
22 and 6 of this Act, and on and after January 1, 1984, every
23 employer shall pay to each of his employees in every occupation
24 wages of not less than \$2.65 per hour or in the case of
25 employees under 18 years of age wages of not less than \$2.25

1 per hour, and on and after October 1, 1984 every employer shall
2 pay to each of his employees in every occupation wages of not
3 less than \$3.00 per hour or in the case of employees under 18
4 years of age wages of not less than \$2.55 per hour, and on or
5 after July 1, 1985 every employer shall pay to each of his
6 employees in every occupation wages of not less than \$3.35 per
7 hour or in the case of employees under 18 years of age wages of
8 not less than \$2.85 per hour, and from January 1, 2004 through
9 December 31, 2004 every employer shall pay to each of his or
10 her employees who is 18 years of age or older in every
11 occupation wages of not less than \$5.50 per hour, and from
12 January 1, 2005 through June 30, 2007 every employer shall pay
13 to each of his or her employees who is 18 years of age or older
14 in every occupation wages of not less than \$6.50 per hour, and
15 from July 1, 2007 through June 30, 2008 every employer shall
16 pay to each of his or her employees who is 18 years of age or
17 older in every occupation wages of not less than \$7.50 per
18 hour, and from July 1, 2008 through June 30, 2009 every
19 employer shall pay to each of his or her employees who is 18
20 years of age or older in every occupation wages of not less
21 than \$7.75 per hour, and from July 1, 2009 through June 30,
22 2010 every employer shall pay to each of his or her employees
23 who is 18 years of age or older in every occupation wages of
24 not less than \$8.00 per hour, and on and after July 1, 2010
25 every employer shall pay to each of his or her employees who is
26 18 years of age or older in every occupation wages of not less

1 than \$8.25 per hour.

2 (2) (Blank). ~~Unless an employee's wages are reduced under~~
3 ~~Section 6, then in lieu of the rate prescribed in item (1) of~~
4 ~~this subsection (a), an employer may pay an employee who is 18~~
5 ~~years of age or older, during the first 90 consecutive calendar~~
6 ~~days after the employee is initially employed by the employer,~~
7 ~~a wage that is not more than 50¢ less than the wage prescribed~~
8 ~~in item (1) of this subsection (a); however, an employer shall~~
9 ~~pay not less than the rate prescribed in item (1) of this~~
10 ~~subsection (a) to:~~

11 ~~(A) a day or temporary laborer, as defined in Section 5~~
12 ~~of the Day and Temporary Labor Services Act, who is 18~~
13 ~~years of age or older; and~~

14 ~~(B) an employee who is 18 years of age or older and~~
15 ~~whose employment is occasional or irregular and requires~~
16 ~~not more than 90 days to complete.~~

17 (3) (Blank). ~~At no time shall the wages paid to any~~
18 ~~employee under 18 years of age be more than 50¢ less than the~~
19 ~~wage required to be paid to employees who are at least 18 years~~
20 ~~of age under item (1) of this subsection (a).~~

21 (4) Beginning on the later of July 1, 2011 or 60 days after
22 the effective date of this amendatory Act of the 97th General
23 Assembly, and on July 1st of each year thereafter, the minimum
24 wage established in subsection (a)(1) of this Section shall be
25 increased by \$0.50 plus an additional amount equal to the
26 increase in the cost of living during the preceding year, until

1 the minimum wage is restored to its historic level. Thereafter
2 the minimum wage shall be increased on July 1st of each year by
3 the increase in the cost of living during the preceding year.

4 (5) The historic level of the minimum wage shall be the
5 inflation adjusted equivalent of \$1.60 per hour in 1968, and
6 shall be calculated by adjusting that wage rate to the current
7 year's dollars based on the percentage change in the Consumer
8 Price Index for all Urban Consumers (or a successor index if
9 any) as published by the Bureau of Labor Statistics of the
10 United States Department of Labor, between January 1, 1968 and
11 the most recent month for which data is available at the time
12 the adjustment is made.

13 (6) The increase in the cost of living during the preceding
14 year shall be calculated by multiplying the current minimum
15 wage by the twelve-month percentage increase, if any, in the
16 Consumer Price Index for all Urban Consumers based on the most
17 recent 12 month period for which data is available when the
18 adjustment is made and rounding that result to the nearest 5
19 cents.

20 (7) The adjusted minimum wage shall be calculated and
21 announced by April 1 of each year, except for 2011 when the
22 adjusted minimum wage may be announced later than April 1.

23 (b) No employer shall discriminate between employees on the
24 basis of sex or mental or physical handicap, except as
25 otherwise provided in this Act by paying wages to employees at
26 a rate less than the rate at which he pays wages to employees

1 for the same or substantially similar work on jobs the
2 performance of which requires equal skill, effort, and
3 responsibility, and which are performed under similar working
4 conditions, except where such payment is made pursuant to (1) a
5 seniority system; (2) a merit system; (3) a system which
6 measures earnings by quantity or quality of production; or (4)
7 a differential based on any other factor other than sex or
8 mental or physical handicap, except as otherwise provided in
9 this Act.

10 (c) (Blank). ~~Every employer of an employee engaged in an~~
11 ~~occupation in which gratuities have customarily and usually~~
12 ~~constituted and have been recognized as part of the~~
13 ~~remuneration for hire purposes is entitled to an allowance for~~
14 ~~gratuities as part of the hourly wage rate provided in Section~~
15 ~~4, subsection (a) in an amount not to exceed 40% of the~~
16 ~~applicable minimum wage rate. The Director shall require each~~
17 ~~employer desiring an allowance for gratuities to provide~~
18 ~~substantial evidence that the amount claimed, which may not~~
19 ~~exceed 40% of the applicable minimum wage rate, was received by~~
20 ~~the employee in the period for which the claim of exemption is~~
21 ~~made, and no part thereof was returned to the employer.~~

22 (d) No camp counselor who resides on the premises of a
23 seasonal camp of an organized not-for-profit corporation shall
24 be subject to the adult minimum wage if the camp counselor (1)
25 works 40 or more hours per week, and (2) receives a total
26 weekly salary of not less than the adult minimum wage for a

1 40-hour week. If the counselor works less than 40 hours per
2 week, the counselor shall be paid the minimum hourly wage for
3 each hour worked. Every employer of a camp counselor under this
4 subsection is entitled to an allowance for meals and lodging as
5 part of the hourly wage rate provided in Section 4, subsection
6 (a), in an amount not to exceed 25% of the minimum wage rate.

7 (e) A camp counselor employed at a day camp is not subject
8 to the adult minimum wage if the camp counselor is paid a
9 stipend on a onetime or periodic basis and, if the camp
10 counselor is a minor, the minor's parent, guardian or other
11 custodian has consented in writing to the terms of payment
12 before the commencement of such employment.

13 (Source: P.A. 94-1072, eff. 7-1-07; 94-1102, eff. 7-1-07;
14 95-945, eff. 1-1-09.)

15 (820 ILCS 105/4a) (from Ch. 48, par. 1004a)

16 Sec. 4a. (1) Except as otherwise provided in this Section,
17 no employer shall employ any of his employees for a workweek of
18 more than 40 hours unless such employee receives compensation
19 for his employment in excess of the hours above specified at a
20 rate not less than 1 1/2 times the regular rate at which he is
21 employed.

22 (2) The provisions of subsection (1) of this Section are
23 not applicable to:

24 A. Any salesman or mechanic primarily engaged in
25 selling or servicing automobiles, trucks or farm

1 implements, if he is employed by a nonmanufacturing
2 establishment primarily engaged in the business of selling
3 such vehicles or implements to ultimate purchasers.

4 B. Any salesman primarily engaged in selling trailers,
5 boats, or aircraft, if he is employed by a nonmanufacturing
6 establishment primarily engaged in the business of selling
7 trailers, boats, or aircraft to ultimate purchasers.

8 C. (Blank). ~~Any employer of agricultural labor, with~~
9 ~~respect to such agricultural employment.~~

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

13 E. Any employee employed in a bona fide executive,
14 administrative or professional capacity, including any
15 radio or television announcer, news editor, or chief
16 engineer, as defined by or covered by the Federal Fair
17 Labor Standards Act of 1938 and the rules adopted under
18 that Act, as both exist on March 30, 2003, but compensated
19 at the amount of salary specified in subsections (a) and
20 (b) of Section 541.600 of Title 29 of the Code of Federal
21 Regulations as proposed in the Federal Register on March
22 31, 2003 or a greater amount of salary as may be adopted by
23 the United States Department of Labor. For bona fide
24 executive, administrative, and professional employees of
25 not-for-profit corporations, the Director may, by
26 regulation, adopt a weekly wage rate standard lower than

1 that provided for executive, administrative, and
2 professional employees covered under the Fair Labor
3 Standards Act of 1938, as now or hereafter amended.

4 F. Any commissioned employee as described in paragraph
5 (i) of Section 7 of the Federal Fair Labor Standards Act of
6 1938 and rules and regulations promulgated thereunder, as
7 now or hereafter amended.

8 G. Any employment of an employee in the stead of
9 another employee of the same employer pursuant to a
10 worktime exchange agreement between employees.

11 H. Any employee of a not-for-profit educational or
12 residential child care institution who (a) on a daily basis
13 is directly involved in educating or caring for children
14 who (1) are orphans, foster children, abused, neglected or
15 abandoned children, or are otherwise homeless children and
16 (2) reside in residential facilities of the institution and
17 (b) is compensated at an annual rate of not less than
18 \$13,000 or, if the employee resides in such facilities and
19 receives without cost board and lodging from such
20 institution, not less than \$10,000.

21 I. Any employee employed as a crew member of any
22 uninspected towing vessel, as defined by Section 2101(40)
23 of Title 46 of the United States Code, operating in any
24 navigable waters in or along the boundaries of the State of
25 Illinois.

26 (3) Any employer may employ any employee for a period or

1 periods of not more than 10 hours in the aggregate in any
2 workweek in excess of the maximum hours specified in subsection
3 (1) of this Section without paying the compensation for
4 overtime employment prescribed in subsection (1) if during that
5 period or periods the employee is receiving remedial education
6 that:

7 (a) is provided to employees who lack a high school
8 diploma or educational attainment at the eighth grade
9 level;

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

12 (c) does not include job specific training.

13 (4) A governmental body is not in violation of subsection
14 (1) if the governmental body provides compensatory time
15 pursuant to paragraph (o) of Section 7 of the Federal Fair
16 Labor Standards Act of 1938, as now or hereafter amended, or is
17 engaged in fire protection or law enforcement activities and
18 meets the requirements of paragraph (k) of Section 7 or
19 paragraph (b)(20) of Section 13 of the Federal Fair Labor
20 Standards Act of 1938, as now or hereafter amended.

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

22 (820 ILCS 105/12) (from Ch. 48, par. 1012)

23 Sec. 12. (a) If any employee is paid by his employer less
24 than the wage to which he is entitled under the provisions of
25 this Act, the employee may recover in a civil action the amount

1 of any such underpayments, including interest thereon,
2 together with costs and such reasonable attorney's fees as may
3 be allowed by the Court, and an additional amount of damages
4 equal to twice the underpaid wages ~~and damages of 2% of the~~
5 ~~amount of any such underpayments for each month following the~~
6 ~~date of payment during which such underpayments remain unpaid.~~
7 Any agreement between the employee and the employer to work for
8 less than such wage is no defense to such action. At the
9 request of the employee or on motion of the Director of Labor,
10 the Department of Labor may make an assignment of such wage
11 claim in trust for the assigning employee and may bring any
12 legal action necessary to collect such claim, and the employer
13 shall be required to pay the costs incurred in collecting such
14 claim. Every such action shall be brought within 3 years from
15 the date of the underpayment. Such employer shall be liable to
16 the Department of Labor for up to 20% of the total employer's
17 underpayment where the employer's conduct is proven by a
18 preponderance of the evidence to be willful, repeated, or with
19 reckless disregard of this Act or any rule adopted under this
20 Act. Such employer shall be additionally liable to the employee
21 for an additional amount of damages equal to twice the
22 underpaid wages ~~damages in the amount of 2% of the amount of~~
23 ~~any such underpayments for each month following the date of~~
24 ~~payment during which such underpayments remain unpaid.~~ These
25 penalties and damages may be recovered in a civil action
26 brought by the Director of Labor in any circuit court. In any

1 such action, the Director of Labor shall be represented by the
2 Attorney General.

3 If an employee collects an additional amount of damages
4 equal to twice the underpaid wages ~~damages of 2% of the amount~~
5 ~~of underpayments~~ as a result of an action brought by the
6 Director of Labor, the employee may not also collect those
7 damages in a private action brought by the employee for the
8 same violation. If an employee collects an additional amount of
9 damages equal to twice the underpaid wages ~~damages of 2% of the~~
10 ~~amount of underpayments~~ in a private action brought by the
11 employee, the employee may not also collect those damages as a
12 result of an action brought by the Director of Labor for the
13 same violation.

14 (b) If an employee has not collected damages under
15 subsection (a) for the same violation, the Director is
16 authorized to supervise the payment of the unpaid minimum wages
17 and the unpaid overtime compensation owing to any employee or
18 employees under Sections 4 and 4a of this Act and may bring any
19 legal action necessary to recover the amount of the unpaid
20 minimum wages and unpaid overtime compensation and an ~~equal~~
21 additional amount equal to twice the unpaid wages and
22 compensation as damages, and the employer shall be required to
23 pay the costs incurred in collecting such claim. Such employer
24 shall be additionally liable to the Department of Labor for up
25 to 20% of the total employer's underpayment where the
26 employer's conduct is proven by a preponderance of the evidence

1 to be willful, repeated, or with reckless disregard of this Act
2 or any rule adopted under this Act. The action shall be brought
3 within 5 years from the date of the failure to pay the wages or
4 compensation. Any sums thus recovered by the Director on behalf
5 of an employee pursuant to this subsection shall be paid to the
6 employee or employees affected. Any sums which, more than one
7 year after being thus recovered, the Director is unable to pay
8 to an employee shall be deposited into the General Revenue
9 Fund.

10 (Source: P.A. 94-1025, eff. 7-14-06.)

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