

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 Employee Classification Act is amended by
5 changing Sections 5, 25, 30, and 40 and by adding Section 63 as
6 follows:

7 (820 ILCS 185/5)

8 Sec. 5. Definitions. As used in this Act:

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

1 job site.

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

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

9 "Department" means the Department of Labor.

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

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

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

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

23 "Performing services" means the performance of any
24 constructing, altering, reconstructing, repairing,
25 rehabilitating, refinishing, refurbishing, remodeling,
26 remediating, renovating, custom fabricating, maintenance,

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

13 (Source: P.A. 95-26, eff. 1-1-08.)

14 (820 ILCS 185/25)

15 Sec. 25. Enforcement.

16 (a) Any interested party may file a complaint with the
17 Department against an entity or employer covered under this Act
18 if there is a reasonable belief that the entity or employer is
19 in violation of this Act. It shall be the duty of the
20 Department to enforce the provisions of this Act. The
21 Department shall have the power to conduct investigations in
22 connection with the administration and enforcement of this Act
23 and any investigator with the Department shall be authorized to
24 visit and inspect, at all reasonable times, any places covered
25 by this Act and shall be authorized to inspect, at all

1 reasonable times, documents related to the determination of
2 whether an individual is an employee under Section 10 of this
3 Act. The Director of Labor or his or her representative may
4 compel, by subpoena, the attendance and testimony of witnesses
5 and the production of books, payrolls, records, papers, and
6 other evidence in any investigation and may administer oaths to
7 witnesses.

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

22 (c) If, upon investigation, the Department finds cause to
23 believe that Section 20 or Section 55 of this Act has been
24 violated, the Department shall notify the employer, in writing,
25 of its finding and any proposed relief due and penalties
26 assessed and that the matter will be referred to an

1 Administrative Law Judge to schedule a formal hearing in
2 accordance with the Illinois Administrative Procedure Act.

3 (d) The employer has 14 calendar days from the date of the
4 Department's finding to answer the allegations contained in the
5 Department's finding. If an employer fails to answer or fails
6 to answer all allegations contained in the Department's
7 finding, any unanswered allegations and findings shall be
8 deemed to be admitted to be true and shall be so found in the
9 final decision issued by the Administrative Law Judge.

10 (e) A final decision of an Administrative Law Judge issued
11 pursuant to this Section is subject to the provisions of the
12 Administrative Review Law and shall be enforceable in an action
13 brought in the name of the people of the State of Illinois by
14 the Attorney General.

15 (f) The Department shall have the authority to adopt
16 reasonable rules for the hearing process. The General Assembly
17 finds that the adoption of rules to implement this Section is
18 deemed an emergency and necessary for the public interest and
19 welfare.

20 (Source: P.A. 95-26, eff. 1-1-08.)

21 (820 ILCS 185/30)

22 Sec. 30. Attorney General; State's Attorneys. Criminal
23 violations of this Act shall be prosecuted by the Attorney
24 General or the appropriate State's Attorney. The Department
25 shall refer matters to the Attorney General and the appropriate

1 State's Attorney upon determining that a criminal violation may
2 have occurred. ~~In all other proceedings the Department shall be~~
3 ~~represented by the Attorney General's Office.~~

4 (Source: P.A. 95-26, eff. 1-1-08.)

5 (820 ILCS 185/40)

6 Sec. 40. Penalties.

7 (a) An employer or entity that violates any of the
8 provisions of this Act or any rule adopted under this Act shall
9 be subject to a civil penalty not to exceed \$1,500 for each
10 violation found in the first audit by the Department. Following
11 a first audit, an employer or entity shall be subject to a
12 civil penalty not to exceed \$2,500 for each repeat violation
13 found by the Department within a 5 year period. For purposes of
14 this Section, each violation of this Act for each person and
15 for each day the violation continues shall constitute a
16 separate and distinct violation. In determining the amount of a
17 penalty, the Director shall consider the appropriateness of the
18 penalty to the employer or entity charged, upon the
19 determination of the gravity of the violations.

20 (b) The amount of the penalty, when finally determined, may
21 be recovered in any administrative proceeding or a civil action
22 filed in any circuit court by the Director of Labor, or a
23 person aggrieved by a violation of this Act or any rule adopted
24 under this Act.

25 (1) The Department shall distribute to all affected

1 employees 10% of the civil penalty recovered as a result of
2 any administrative proceeding or civil action brought by
3 the Department. The remaining 90% of the amount recovered
4 shall be submitted to the Director of Labor.

5 (2) In any civil action brought by an interested party
6 pursuant to this Section, the circuit court shall award the
7 interested party 10% of the amount recovered. In such case,
8 the remaining amount recovered shall be submitted to the
9 Director of Labor.

10 (c) Any uncollected amount shall be subject to the
11 provisions of the Illinois State Collection Act of 1986.

12 (Source: P.A. 95-26, eff. 1-1-08.)

13 (820 ILCS 185/63 new)

14 Sec. 63. Individual liability. In addition to an individual
15 who is an employer pursuant to Section 5 of this Act, any
16 officer of a corporation or agent of an employer who knowingly
17 permits such employer to violate the provisions of this Act may
18 be held individually liable for all violations and penalties
19 assessed by the Department.