



Rep. Elizabeth Hernandez

Filed: 5/18/2015

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LRB099 05152 JLS 35741 a

1 AMENDMENT TO HOUSE BILL 1288

2 AMENDMENT NO. _____. Amend House Bill 1288 by replacing
3 everything after the enacting clause with the following:

4 "Section 1. Short title. This Act may be cited as the
5 Domestic Workers' Bill of Rights Act.

6 Section 5. Purpose and findings. Domestic workers play a
7 critical role in Illinois' economy, working to ensure the
8 health and prosperity of Illinois families and freeing others
9 to participate in the workforce. Despite the value of their
10 work, domestic workers have historically been excluded from the
11 protections under State law extended to workers in other
12 industries. Domestic workers are predominantly women who labor
13 to support families and children of their own and who receive
14 low pay and minimal or no benefits. Without clear standards
15 governing their workplaces, and working alone and behind closed
16 doors, domestic workers are among the most isolated and

1 vulnerable workforce in the State. Workforce projections are
2 one of growth for domestic workers, but the lack of decent pay
3 and other workplace protections undermines the likelihood of
4 building and maintaining a reliable and experienced workforce
5 that is able to meet the needs of Illinois families. Therefore,
6 the General Assembly finds that because domestic workers care
7 for the most important elements of Illinoisans' lives, our
8 families and our homes, it is in the interest of employees,
9 employers, and the people of Illinois to ensure that the rights
10 of domestic workers are respected, protected, and enforced and
11 that this Act shall be interpreted liberally to aid this
12 purpose.

13 Section 10. Definitions. As used in this Act:

14 "Domestic work" means:

15 (1) housekeeping;

16 (2) house cleaning;

17 (3) home management;

18 (4) nanny services including childcare and child
19 monitoring;

20 (5) caregiving, personal care or home health services
21 for elderly persons or persons with an illness, injury, or
22 disability who require assistance in caring for
23 themselves;

24 (6) laundering;

25 (7) cooking;

1 (8) companion services;

2 (9) chauffeuring; or

3 (10) other household services for members of
4 households or their guests in or about a private home or
5 residence or any other location where the domestic work is
6 performed.

7 "Domestic worker" means a person employed to perform
8 domestic work. "Domestic worker" does not include: (i) a person
9 performing domestic work who is the employer's parent, spouse,
10 child, or other member of his or her immediate family,
11 exclusive of individuals whose primary work duties are
12 caregiving, companion services, personal care or home health
13 services for elderly persons or persons with an illness,
14 injury, or disability who require assistance in caring for
15 themselves; (ii) child and day care home providers
16 participating in the child care assistance program under
17 Section 9A-11 of the Illinois Public Aid Code; (iii) a person
18 who is employed by one or more employers in or about a private
19 home or residence or any other location where the domestic work
20 is performed for 8 hours or less in the aggregate in any
21 workweek on a regular basis, exclusive of individuals whose
22 primary work duties are caregiving, companion services,
23 personal care or home health services for elderly persons or
24 persons with an illness, injury, or disability who require
25 assistance in caring for themselves; or (iv) a person who the
26 employer establishes: (A) has been and will continue to be free

1 from control and direction over the performance of his or her
2 work, both under a contract of service and in fact; (B) is
3 engaged in an independently established trade, occupation,
4 profession or business; or (C) is deemed a legitimate sole
5 proprietor or partnership. A sole proprietor or partnership
6 shall be deemed to be legitimate if the employer establishes
7 that:

8 (1) the sole proprietor or partnership is performing
9 the service free from the direction or control over the
10 means and manner of providing the service, subject only to
11 the right of the employer for whom the service is provided
12 to specify the desired result;

13 (2) the sole proprietor or partnership is not subject
14 to cancellation or destruction upon severance of the
15 relationship with the employer;

16 (3) the sole proprietor or partnership has a
17 substantial investment of capital in the sole
18 proprietorship or partnership beyond ordinary tools and
19 equipment and a personal vehicle;

20 (4) the sole proprietor or partnership owns the capital
21 goods and gains the profits and bears the losses of the
22 sole proprietorship or partnership;

23 (5) the sole proprietor or partnership makes its
24 services available to the general public on a continuing
25 basis;

26 (6) the sole proprietor or partnership includes

1 services rendered on a Federal Income Tax Schedule as an
2 independent business or profession;

3 (7) the sole proprietor or partnership performs
4 services for the contractor under the sole
5 proprietorship's or partnership's name;

6 (8) when the services being provided require a license
7 or permit, the sole proprietor or partnership obtains and
8 pays for the license or permit in the sole proprietorship's
9 or partnership's name;

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

12 (10) if necessary, the sole proprietor or partnership
13 hires its own employees without approval of the employer,
14 pays the employees without reimbursement from the employer
15 and reports the employees' income to the Internal Revenue
16 Service;

17 (11) the employer does not represent the sole
18 proprietorship or partnership as an employee of the
19 employer to the public; and

20 (12) the sole proprietor or partnership has the right
21 to perform similar services for others on whatever basis
22 and whenever it chooses.

23 "Employ" includes to suffer or permit to work.

24 "Employee" means a domestic worker.

25 "Employer" means: any individual; partnership;
26 association; corporation; limited liability company; business

1 trust; employment and labor placement agency where wages are
2 made directly or indirectly by the agency or business for work
3 undertaken by employees under hire to a third party pursuant to
4 a contract between the business or agency with the third party;
5 the State of Illinois and local governments, or any political
6 subdivision of the State or local government, or State or local
7 government agency; for which one or more persons is gainfully
8 employed, express or implied, whether lawfully or unlawfully
9 employed, who employs a domestic worker or who exercises
10 control over the domestic worker's wage, remuneration, or other
11 compensation, hours of employment, place of employment, or
12 working conditions, or whose agent or any other person or group
13 of persons acting directly or indirectly in the interest of an
14 employer in relation to the employee exercises control over the
15 domestic worker's wage, remuneration or other compensation,
16 hours of employment, place of employment, or working
17 conditions.

18 Section 90. Severability. The provisions of this Act are
19 severable under Section 1.31 of the Statute on Statutes.

20 Section 92. The Illinois Human Rights Act is amended by
21 changing Section 2-101 as follows:

22 (775 ILCS 5/2-101) (from Ch. 68, par. 2-101)

23 Sec. 2-101. Definitions. The following definitions are

1 applicable strictly in the context of this Article.

2 (A) Employee.

3 (1) "Employee" includes:

4 (a) Any individual performing services for
5 remuneration within this State for an employer;

6 (b) An apprentice;

7 (c) An applicant for any apprenticeship.

8 For purposes of subsection (D) of Section 2-102 of this
9 Act, "employee" also includes an unpaid intern. An unpaid
10 intern is a person who performs work for an employer under
11 the following circumstances:

12 (i) the employer is not committed to hiring the
13 person performing the work at the conclusion of the
14 intern's tenure;

15 (ii) the employer and the person performing the
16 work agree that the person is not entitled to wages for
17 the work performed; and

18 (iii) the work performed:

19 (I) supplements training given in an
20 educational environment that may enhance the
21 employability of the intern;

22 (II) provides experience for the benefit of
23 the person performing the work;

24 (III) does not displace regular employees;

25 (IV) is performed under the close supervision
26 of existing staff; and

1 (V) provides no immediate advantage to the
2 employer providing the training and may
3 occasionally impede the operations of the
4 employer.

5 (2) "Employee" does not include:

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

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

9 (c) Elected public officials or the members of
10 their immediate personal staffs;

11 (d) Principal administrative officers of the State
12 or of any political subdivision, municipal corporation
13 or other governmental unit or agency;

14 (e) A person in a vocational rehabilitation
15 facility certified under federal law who has been
16 designated an evaluatee, trainee, or work activity
17 client.

18 (B) Employer.

19 (1) "Employer" includes:

20 (a) Any person employing 15 or more employees
21 within Illinois during 20 or more calendar weeks within
22 the calendar year of or preceding the alleged
23 violation;

24 (b) Any person employing one or more employees when
25 a complainant alleges civil rights violation due to
26 unlawful discrimination based upon his or her physical

1 or mental disability unrelated to ability, pregnancy,
2 or sexual harassment;

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

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

8 (e) A joint apprenticeship or training committee
9 without regard to the number of employees.

10 (2) "Employer" does not include any religious
11 corporation, association, educational institution,
12 society, or non-profit nursing institution conducted by
13 and for those who rely upon treatment by prayer through
14 spiritual means in accordance with the tenets of a
15 recognized church or religious denomination with respect
16 to the employment of individuals of a particular religion
17 to perform work connected with the carrying on by such
18 corporation, association, educational institution, society
19 or non-profit nursing institution of its activities.

20 (C) Employment Agency. "Employment Agency" includes both
21 public and private employment agencies and any person, labor
22 organization, or labor union having a hiring hall or hiring
23 office regularly undertaking, with or without compensation, to
24 procure opportunities to work, or to procure, recruit, refer or
25 place employees.

26 (D) Labor Organization. "Labor Organization" includes any

1 organization, labor union, craft union, or any voluntary
2 unincorporated association designed to further the cause of the
3 rights of union labor which is constituted for the purpose, in
4 whole or in part, of collective bargaining or of dealing with
5 employers concerning grievances, terms or conditions of
6 employment, or apprenticeships or applications for
7 apprenticeships, or of other mutual aid or protection in
8 connection with employment, including apprenticeships or
9 applications for apprenticeships.

10 (E) Sexual Harassment. "Sexual harassment" means any
11 unwelcome sexual advances or requests for sexual favors or any
12 conduct of a sexual nature when (1) submission to such conduct
13 is made either explicitly or implicitly a term or condition of
14 an individual's employment, (2) submission to or rejection of
15 such conduct by an individual is used as the basis for
16 employment decisions affecting such individual, or (3) such
17 conduct has the purpose or effect of substantially interfering
18 with an individual's work performance or creating an
19 intimidating, hostile or offensive working environment.

20 (F) Religion. "Religion" with respect to employers
21 includes all aspects of religious observance and practice, as
22 well as belief, unless an employer demonstrates that he is
23 unable to reasonably accommodate an employee's or prospective
24 employee's religious observance or practice without undue
25 hardship on the conduct of the employer's business.

26 (G) Public Employer. "Public employer" means the State, an

1 agency or department thereof, unit of local government, school
2 district, instrumentality or political subdivision.

3 (H) Public Employee. "Public employee" means an employee of
4 the State, agency or department thereof, unit of local
5 government, school district, instrumentality or political
6 subdivision. "Public employee" does not include public
7 officers or employees of the General Assembly or agencies
8 thereof.

9 (I) Public Officer. "Public officer" means a person who is
10 elected to office pursuant to the Constitution or a statute or
11 ordinance, or who is appointed to an office which is
12 established, and the qualifications and duties of which are
13 prescribed, by the Constitution or a statute or ordinance, to
14 discharge a public duty for the State, agency or department
15 thereof, unit of local government, school district,
16 instrumentality or political subdivision.

17 (J) Eligible Bidder. "Eligible bidder" means a person who,
18 prior to a bid opening, has filed with the Department a
19 properly completed, sworn and currently valid employer report
20 form, pursuant to the Department's regulations. The provisions
21 of this Article relating to eligible bidders apply only to bids
22 on contracts with the State and its departments, agencies,
23 boards, and commissions, and the provisions do not apply to
24 bids on contracts with units of local government or school
25 districts.

26 (K) Citizenship Status. "Citizenship status" means the

1 status of being:

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

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

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

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

10 (Source: P.A. 97-877, eff. 8-2-12; 98-1037, eff. 1-1-15;
11 98-1050, eff. 1-1-15; revised 10-3-14.)

12 Section 93. The Minimum Wage Law is amended by changing
13 Section 3 as follows:

14 (820 ILCS 105/3) (from Ch. 48, par. 1003)

15 Sec. 3. As used in this Act:

16 (a) "Director" means the Director of the Department of
17 Labor, and "Department" means the Department of Labor.

18 (b) "Wages" means compensation due to an employee by reason
19 of his employment, including allowances determined by the
20 Director in accordance with the provisions of this Act for
21 gratuities and, when furnished by the employer, for meals and
22 lodging actually used by the employee.

23 (c) "Employer" includes any individual, partnership,
24 association, corporation, limited liability company, business

1 trust, governmental or quasi-governmental body, or any person
2 or group of persons acting directly or indirectly in the
3 interest of an employer in relation to an employee, for which
4 one or more persons are gainfully employed on some day within a
5 calendar year. An employer is subject to this Act in a calendar
6 year on and after the first day in such calendar year in which
7 he employs one or more persons, and for the following calendar
8 year.

9 (d) "Employee" includes any individual permitted to work by
10 an employer in an occupation, and includes, notwithstanding
11 subdivision (1) of this subsection (d), one or more domestic
12 workers as defined in Section 10 of the Domestic Workers' Bill
13 of Rights Act, but does not include any individual permitted to
14 work:

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

18 (2) As an employee employed in agriculture or
19 aquaculture (A) if such employee is employed by an employer
20 who did not, during any calendar quarter during the
21 preceding calendar year, use more than 500 man-days of
22 agricultural or aquacultural labor, (B) if such employee is
23 the parent, spouse or child, or other member of the
24 employer's immediate family, (C) if such employee (i) is
25 employed as a hand harvest laborer and is paid on a piece
26 rate basis in an operation which has been, and is

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

16 (3) (Blank). ~~In domestic service in or about a private~~
17 ~~home.~~

18 (4) As an outside salesman.

19 (5) As a member of a religious corporation or
20 organization.

21 (6) At an accredited Illinois college or university
22 employed by the college or university at which he is a
23 student who is covered under the provisions of the Fair
24 Labor Standards Act of 1938, as heretofore or hereafter
25 amended.

26 (7) For a motor carrier and with respect to whom the

1 U.S. Secretary of Transportation has the power to establish
2 qualifications and maximum hours of service under the
3 provisions of Title 49 U.S.C. or the State of Illinois
4 under Section 18b-105 (Title 92 of the Illinois
5 Administrative Code, Part 395 - Hours of Service of
6 Drivers) of the Illinois Vehicle Code.

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

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

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

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

18 (h) "Day camp" means a seasonal recreation program in
19 operation for no more than 16 weeks intermittently throughout
20 the calendar year, accommodating for profit or under
21 philanthropic or charitable auspices, 5 or more children under
22 18 years of age, not including overnight programs. The term
23 "day camp" does not include a "day care agency", "child care
24 facility" or "foster family home" as licensed by the Illinois
25 Department of Children and Family Services.

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

1 Section 94. The Wages of Women and Minors Act is amended by
2 changing Section 1 as follows:

3 (820 ILCS 125/1) (from Ch. 48, par. 198.1)

4 Sec. 1. As used in this Act:

5 "Department" means the Department of Labor.

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

7 "Wage Board" means a board created as provided in this Act.

8 "Woman" means a female of 18 years or over.

9 "Minor" means a person under the age of 18 years.

10 "Occupation" means an industry, trade or business or branch
11 thereof or class of work therein in which women or minors are
12 gainfully employed, but does not include ~~domestic service in~~
13 ~~the home of the employer or~~ labor on a farm.

14 "An oppressive and unreasonable wage" means a wage which is
15 both less than the fair and reasonable value of the services
16 rendered and less than sufficient to meet the minimum cost of
17 living necessary for health.

18 "A fair wage" means a wage fairly and reasonably
19 commensurate with the value of the services or class of service
20 rendered. In establishing a minimum fair wage for any service
21 or class of service under this Act the Department and the wage
22 board without being bound by any technical rules of evidence or
23 procedure (1) may take into account all relevant circumstances
24 affecting the value of the service or class of service

1 rendered, and (2) may be guided by like considerations as would
2 guide a court in a suit for the reasonable value of services
3 rendered where services are rendered at the request of an
4 employer without contract as to the amount of the wage to be
5 paid, and (3) may consider the wages paid in the State for work
6 of like or comparable character by employers who voluntarily
7 maintain minimum fair wage standards.

8 "A directory order" means an order the nonobservance of
9 which may be published as provided in Section 9 of this Act.

10 "A mandatory order" means an order the violation of which
11 is subject to the penalties prescribed in paragraph 2 of
12 Section 15 of this Act.

13 (Source: P.A. 91-357, eff. 7-29-99.)

14 Section 95. The One Day Rest In Seven Act is amended by
15 changing Section 2 as follows:

16 (820 ILCS 140/2) (from Ch. 48, par. 8b)

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

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

22 A person employed as a domestic worker, as defined in
23 Section 10 of the Domestic Workers' Bill of Rights Act, shall
24 be allowed at least 24 consecutive hours of rest in every

1 calendar week. This subsection (a) does not prohibit a domestic
2 worker from voluntarily agreeing to work on such day of rest
3 required by this subsection (a) if the worker is compensated at
4 the overtime rate for all hours worked on such day of rest. The
5 day of rest authorized under this subsection (a) should,
6 whenever possible, coincide with the traditional day reserved
7 by the domestic worker for religious worship.

8 (b) Subsection (a) ~~This Section~~ does not apply to the
9 following:

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

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

17 (3) Employees employed in agriculture or coal mining;
18 and

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

24 (5) Employees employed as watchmen or security guards;
25 and

26 (6) Employees who are employed in a bonafide executive,

1 administrative, or professional capacity or in the
2 capacity of an outside salesman, as defined in Section 12
3 (a) (1) of the federal Fair Labor Standards Act, as
4 amended, and those employed as supervisors as defined in
5 Section 2 (11) of the National Labor Relations Act, as
6 amended; and

7 (7) Employees who are employed as crew members 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 (Source: P.A. 92-623, eff. 7-11-02.)

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