

SB2895



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

SB2895

Introduced 2/18/2016, by Sen. James F. Clayborne, Jr.

SYNOPSIS AS INTRODUCED:

820 ILCS 105/3

from Ch. 48, par. 1003

820 ILCS 105/3.5 new

Amends the Minimum Wage Law. Sets forth the criteria for establishing that a person is conclusively presumed to be an independent contractor. Effective immediately.

LRB099 16927 JLS 41274 b

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 Section 3 and by adding Section 3.5 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) For an employer employing fewer than 4 employees
6 exclusive of the employer's parent, spouse or child or
7 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) In domestic service in or about a private home.

7 (4) As an outside salesman.

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

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

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

22 (8) An individual described in Section 3.5.

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 105/3.5 new)

18 Sec. 3.5. Independent contractor; presumption.

19 (a) For the purposes of this Act, a person is conclusively
20 presumed to be an independent contractor if:

21 (1) unless the person is a foreign national who is
22 legally present in the United States, the person possesses
23 or has applied for an employer identification number or
24 social security number or has filed an income tax return
25 for a business or earnings from self-employment with the

1 Internal Revenue Service in the previous year;

2 (2) the person is required by the contract with the
3 principal to hold any necessary State or local business
4 license and to maintain any necessary occupational
5 license, insurance, or bonding; and

6 (3) the person satisfies 3 or more of the following
7 criteria:

8 (A) Notwithstanding the exercise of any control
9 necessary to comply with any statutory, regulatory, or
10 contractual obligations, the person has control and
11 discretion over the means and manner of the performance
12 of any work and the result of the work, rather than the
13 means or manner by which the work is performed, is the
14 primary element bargained for by the principal in the
15 contract.

16 (B) Except for an agreement with the principal
17 relating to the completion schedule, range of work
18 hours or, if the work contracted for is entertainment,
19 the time such entertainment is to be presented, the
20 person has control over the time the work is performed.

21 (C) The person is not required to work exclusively
22 for one principal unless:

23 (i) a law, regulation, or ordinance prohibits
24 the person from providing services to more than one
25 principal; or

26 (ii) the person has entered into a written

1 contract to provide services to only one principal
2 for a limited period.

3 (D) The person is free to hire employees to assist
4 with the work.

5 (E) The person contributes a substantial
6 investment of capital in the business of the person
7 including, without limitation, the:

8 (i) purchase or lease of ordinary tools,
9 material, and equipment regardless of source;

10 (ii) obtaining of a license or other
11 permission from the principal to access any work
12 space of the principal to perform the work for
13 which the person was engaged; and

14 (iii) lease of any work space from the
15 principal required to perform the work for which
16 the person was engaged.

17 The determination of whether an investment of capital is
18 substantial for the purpose of this subsection must be made on
19 the basis of the amount of income the person receives, the
20 equipment commonly used, and the expenses commonly incurred in
21 the trade or profession in which the person engages.

22 (b) The fact that a person is not conclusively presumed to
23 be an independent contractor for failure to satisfy 3 or more
24 of the criteria set forth in paragraph (3) of subsection (a)
25 does not automatically create a presumption that the person is
26 an employee.

1 (c) As used in this Section, "foreign national" has the
2 meaning ascribed to it in 52 U.S.C 30121.

3 Section 99. Effective date. This Act takes effect upon
4 becoming law.