

AN ACT concerning employment.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

Section 5. The Minimum Wage Law is amended by changing Sections 3, 7, and 12 as follows:

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

Sec. 3. As used in this Act:

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

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

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

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

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

(2) As an employee employed in agriculture or aquaculture (A) if such employee is employed by an employer

who did not, during any calendar quarter during the preceding calendar year, use more than 500 man-days of agricultural or aquacultural labor, (B) if such employee is the parent, spouse or child, or other member of the employer's immediate family, (C) if such employee (i) is employed as a hand harvest laborer and is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment, (ii) commutes daily from his permanent residence to the farm on which he is so employed, and (iii) has been employed in agriculture less than 13 weeks during the preceding calendar year, (D) if such employee (other than an employee described in clause (C) of this subparagraph): (i) is 16 years of age or under and is employed as a hand harvest laborer, is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment, (ii) is employed on the same farm as his parent or person standing in the place of his parent, and (iii) is paid at the same piece rate as employees over 16 are paid on the same farm.

(3) In domestic service in or about a private home.

(4) As an outside salesman.

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

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

(7) For a motor carrier and with respect to whom the U.S. Secretary of Transportation has the power to establish qualifications and maximum hours of service under the provisions of Title 49 U.S.C. or the State of Illinois under Section 18b-105 (Title 92 of the Illinois

Administrative Code, Part 395 - Hours of Service of Drivers) of the Illinois Vehicle Code.

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

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

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

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

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

(820 ILCS 105/7) (from Ch. 48, par. 1007)

Sec. 7. The Director or his authorized representatives have the authority to:

(a) Investigate and gather data regarding the wages, hours and other conditions and practices of employment in any industry subject to this Act, and may enter and inspect such places and such records (and make such transcriptions thereof) at reasonable times during regular business hours, not including lunch time at a restaurant, question such employees, and investigate such facts, conditions, practices or matters as he may deem necessary or appropriate to determine whether any person has violated any provision of this Act, or which may aid in the enforcement of this Act.

(b) Require from any employer full and correct statements and reports in writing, including sworn statements, at such times as the Director may deem necessary, of the wages, hours, names, addresses, and other information pertaining to his employees as he may deem necessary for the enforcement of this Act.

(c) Require by subpoena the attendance and testimony of witnesses and the production of all books, records, and other

evidence relative to a matter under investigation or hearing. The subpoena shall be signed and issued by the Director or his or her authorized representative. If a person fails to comply with any subpoena lawfully issued under this Section or a witness refuses to produce evidence or testify to any matter regarding which he or she may be lawfully interrogated, the court may, upon application of the Director or his or her authorized representative, compel obedience by proceedings for contempt.

(Source: P.A. 77-1451.)

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

Sec. 12. (a) If any employee is paid by his employer less than the wage to which he is entitled under the provisions of this Act, the employee may recover in a civil action the amount of any such underpayments together with costs and such reasonable attorney's fees as may be allowed by the Court, and damages of 2% of the amount of any such underpayments for each month following the date of payment during which such underpayments remain unpaid. Any ~~any~~ agreement between the employee ~~him~~ and the ~~his~~ employer to work for less than such wage is no defense to such action. At the request of the employee or on motion of the Director of Labor, the Department of Labor may make an assignment of such wage claim in trust for the assigning employee and may bring any legal action necessary to collect such claim, and the employer shall be required to pay the costs incurred in collecting such claim. Every such action shall be brought within 3 years from the date of the underpayment. Such employer shall be liable to the Department of Labor for up to 20% of the total employer's underpayment where the employer's conduct is proven by a preponderance of the evidence to be willful, repeated, or with reckless disregard of this Act or any rule adopted under this Act. Such employer ~~and~~ shall be additionally liable to the employee for ~~punitive~~ damages in the amount of 2% of the amount of any such underpayments for each month following the date of payment

during which such underpayments remain unpaid. These penalties and damages ~~The Director may promulgate rules for the collection of these penalties. The amount of a penalty may be determined, and the penalty may be assessed, through an administrative hearing. The penalty may be recovered in a civil action brought by the Director of Labor in any circuit court. The penalty shall be imposed in cases in which an employer's conduct is proven by a preponderance of the evidence to be willful.~~ In any such action, the Director of Labor shall be represented by the Attorney General.

If an employee collects damages of 2% of the amount of underpayments as a result of an action brought by the Director of Labor, the employee may not also collect those damages in a private action brought by the employee for the same violation. If an employee collects damages of 2% of the amount of underpayments in a private action brought by the employee, the employee may not also collect those damages as a result of an action brought by the Director of Labor for the same violation.

(b) If an employee has not collected damages under subsection (a) for the same violation, the ~~The~~ Director is authorized to supervise the payment of the unpaid minimum wages and the unpaid overtime compensation owing to any employee or employees under Sections 4 and 4a of this Act and may bring any legal action necessary to recover the amount of the unpaid minimum wages and unpaid overtime compensation and an equal additional amount as ~~punitive~~ damages, and the employer shall be required to pay the costs incurred in collecting such claim. Such and the employer shall be additionally liable to the Department of Labor for up to 20% of the total employer's underpayment where the employer's conduct is proven by a preponderance of the evidence to be willful, repeated, or with reckless disregard of this Act or any rule adopted under this Act. ~~be required to pay the costs.~~ The action shall be brought within 5 years from the date of the failure to pay the wages or compensation. Any sums thus recovered by the Director on behalf of an employee pursuant to this subsection shall be paid to the

employee or employees affected. Any sums which, more than one year after being thus recovered, the Director is unable to pay to an employee shall be deposited into the General Revenue Fund.

(Source: P.A. 92-392, eff. 1-1-02.)

Section 10. The Illinois Wage Payment and Collection Act is amended by changing Sections 2 and 14 as follows:

(820 ILCS 115/2) (from Ch. 48, par. 39m-2)

Sec. 2. For all employees, other than separated employees, "wages" shall be defined as any compensation owed an employee by an employer pursuant to an employment contract or agreement between the 2 parties, whether the amount is determined on a time, task, piece, or any other basis of calculation. Payments to separated employees shall be termed "final compensation" and shall be defined as wages, salaries, earned commissions, earned bonuses, and the monetary equivalent of earned vacation and earned holidays, and any other compensation owed the employee by the employer pursuant to an employment contract or agreement between the 2 parties. Where an employer is legally committed through a collective bargaining agreement or otherwise to make contributions to an employee benefit, trust or fund on the basis of a certain amount per hour, day, week or other period of time, the amount due from the employer to such employee benefit, trust, or fund shall be defined as "wage supplements", subject to the wage collection provisions of this Act.

As used in this Act, the term "employer" shall include any individual, partnership, association, corporation, limited liability company, business trust, employment and labor placement agencies where wage payments are made directly or indirectly by the agency or business for work undertaken by employees under hire to a third party pursuant to a contract between the business or agency with the third party, or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee, for which

one or more persons is gainfully employed.

As used in this Act, the term "employee" shall include any individual permitted to work by an employer in an occupation, but shall not include any individual:

(1) who has been and will continue to be free from control and direction over the performance of his work, both under his contract of service with his employer and in fact; and

(2) who performs work which is either outside the usual course of business or is performed outside all of the places of business of the employer unless the employer is in the business of contracting with third parties for the placement of employees; and

(3) who is in an independently established trade, occupation, profession or business.

(Source: P.A. 89-364, eff. 8-18-95; 89-626, eff. 8-9-96.)

(820 ILCS 115/14) (from Ch. 48, par. 39m-14)

Sec. 14. (a) Any employer or any agent of an employer, who, being able to pay wages, final compensation, or wage supplements and being under a duty to pay, wilfully refuses to pay as provided in this Act, or falsely denies the amount or validity thereof or that the same is due, with intent to secure for himself or other person any underpayment of such indebtedness or with intent to annoy, harass, oppress, hinder, delay or defraud the person to whom such indebtedness is due, upon conviction, is guilty of a Class C misdemeanor. Each day during which any violation of this Act continues shall constitute a separate and distinct offense.

(b) Any employer who has been demande~~d~~ordered by the Director of Labor or ordered by the court to pay wages due an employee and who shall fail to do so within 15 days after such demand or order is entered shall be liable to pay a penalty of 1% per calendar day to the employee for each day of delay in paying such wages to the employee up to an amount equal to twice the sum of unpaid wages due the employee.

(c) Any employer, or any agent of an employer, who knowingly discharges or in any other manner knowingly discriminates against any employee because that employee has made a complaint to his employer, or to the Director of Labor or his authorized representative, that he or she has not been paid in accordance with the provisions of this Act, or because that employee has caused to be instituted any proceeding under or related to this Act, or because that employee has testified or is about to testify in an investigation or proceeding under this Act, is guilty, upon conviction, of a Class C misdemeanor.

(Source: P.A. 83-202.)

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