

AN ACT concerning employment.

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

Section 5. The Illinois Wage Payment and Collection Act is amended by changing Sections 2, 10, and 14 as follows:

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

Sec. 2. Definitions. 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.

"Pay stub" means an itemized statement or statements reflecting an employee's hours worked, rate of pay, overtime pay and overtime hours worked, gross wages earned, deductions made from the employee's wages, and the total of wages and deductions year to date.

The following terms apply to an employer's use of payroll cards to pay wages to an employee under the requirements of this Act:

"Payroll card" means a card provided to an employee by an employer or other payroll card issuer as a means of accessing the employee's payroll card account.

"Payroll card account" means an account that is directly or indirectly established through an employer and to which deposits of a participating employee's wages are made.

"Payroll card issuer" means a bank, financial institution, or other entity that issues a payroll card to an employee under an employer payroll card program.

(Source: P.A. 98-862, eff. 1-1-15.)

(820 ILCS 115/10) (from Ch. 48, par. 39m-10)

Sec. 10.

(a) Employers shall notify employees, at the time of hiring, of the rate of pay and of the time and place of payment. Whenever possible, such notification shall be in writing and shall be acknowledged by both parties. Employers shall also notify employees of any changes in the

arrangements, specified above, prior to the time of change.

(b) Employers shall keep records of names and addresses of all employees and of wages paid each payday, and shall furnish each employee with a pay stub ~~an itemized statement of deductions made from his wages~~ for each pay period.

(c) An employer shall maintain a copy of an employee's pay stub for a period of not less than 3 years after the date of payment, regardless of whether the employee's employment ends during this period, whether the pay stub is furnished electronically or in paper form.

(d) In addition to furnishing a pay stub for each pay period as required under subsection (b), an employer shall furnish copies of pay stubs to current and former employees as follows:

(1) An employer shall provide an employee with a copy of the employee's pay stubs upon the employee's request. The employer may require that the employee submit the request in writing. The employer shall furnish the copy of the pay stubs to the employee within 21 calendar days of the employee's request. An employer is not required to grant an employee's request for a copy of pay stubs more than twice in a 12-month period.

(2) An employer shall provide a former employee with a copy of the former employee's previous pay stubs upon the former employee's request. The employer shall furnish the copy of the pay stubs to the former employee within 21

calendar days of the former employee's request. An employer is not required to grant a former employee's request for a copy of pay stubs more than twice in a 12-month period or more than one year after the date of separation. The employer shall provide the copy of the pay stubs in either a physical or electronic format, as chosen by the former employee, including a communication that is transmitted through electronic mail, text message, computer system, or is otherwise sent and stored electronically and is capable of being downloaded or permanently retained by the former employee.

(3) An employer who furnishes electronic pay stubs in a manner that a former employee cannot access for at least a full year after separation shall, upon an employee's separation from employment, offer to provide the outgoing employee with a record of all of the outgoing employee's pay stubs from the year preceding the date of separation. The offer shall be made to the outgoing employee by the end of the outgoing employee's final pay period. An employer shall record in writing the date on which this offer was made to the outgoing employee and if and how the outgoing employee responded.

(4) A request made by an employee or former employee under this Section shall be made to a person responsible for maintaining the employer's payroll, including the employer's human resources department or payroll

department, the employee's supervisor or department manager, or an individual designated in the employer's written policy.

(e) Every employer shall post and keep posted at each regular place of business in a position easily accessible to all employees one or more notices indicating the regular paydays and the place and time for payment of his employees, and on forms supplied from time to time by the Department of Labor containing a copy or summary of the provisions of this Act.

(Source: P.A. 81-593.)

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

Sec. 14. Penalties.

(a) Any employee not timely paid wages, final compensation, or wage supplements by his or her employer as required by this Act shall be entitled to recover through a claim filed with the Department of Labor or in a civil action, but not both, the amount of any such underpayments and damages of 5% of the amount of any such underpayments for each month following the date of payment during which such underpayments remain unpaid. In a civil action, such employee shall also recover costs and all reasonable attorney's fees.

(a-5) In addition to the remedies provided in subsections (a), (b), and (c) of this Section, 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, willfully ~~willfully~~ 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:

(1) for unpaid wages, final compensation or wage supplements in the amount of \$5,000 or less, a Class B misdemeanor; or

(2) for unpaid wages, final compensation or wage supplements in the amount of more than \$5,000, a Class A misdemeanor.

Each day during which any violation of this Act continues shall constitute a separate and distinct offense.

Any employer or any agent of an employer who violates this Section of the Act a subsequent time within 2 years of a prior criminal conviction under this Section is guilty, upon conviction, of a Class 4 felony.

(b) Any employer who has been demanded or ordered by the Department or ordered by the court to pay wages, final compensation, or wage supplements due an employee shall be required to pay a non-waivable administrative fee to the Department of Labor in the amount of \$250 if the amount ordered by the Department as wages owed is \$3,000 or less; \$500 if the amount ordered by the Department as wages owed is more than

\$3,000, but less than \$10,000; and \$1,000 if the amount ordered by the Department as wages owed is \$10,000 or more. Any employer who has been so demanded or ordered by the Department or ordered by a court to pay such wages, final compensation, or wage supplements and who fails to seek timely review of such a demand or order as provided for under this Act and who fails to comply within 15 calendar days after such demand or within 35 days of an administrative or court order is entered shall also be liable to pay a penalty to the Department of Labor of 20% of the amount found owing and a penalty to the employee of 1% per calendar day of the amount found owing for each day of delay in paying such wages to the employee. All moneys recovered as fees and civil penalties under this Act, except those owing to the affected employee, shall be deposited into the Wage Theft Enforcement Fund, a special fund which is hereby created in the State treasury. Moneys in the Fund may be used for enforcement of this Act and for outreach and educational activities of the Department related to the recovery of unpaid or underpaid compensation and the disbursement of moneys to affected parties.

(b-5) Penalties and fees under this Section may be assessed by the Department and recovered in a civil action brought by the Department in any circuit court or in any administrative adjudicative proceeding under this Act. In any such civil action or administrative adjudicative proceeding under this Act, the Department shall be represented by the

Attorney General.

(c) Any employer, or any agent of an employer, who discharges or in any other manner discriminates against any employee because that employee has made a complaint to his or her employer, to the Director of Labor or his or her authorized representative, in a public hearing, or to a community organization 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. An employee who has been unlawfully retaliated against shall be entitled to recover through a claim filed with the Department of Labor or in a civil action, but not both, all legal and equitable relief as may be appropriate. In a civil action, such employee shall also recover costs and all reasonable attorney's fees.

(d) Except as provided under subsections (a), (b), and (c), an employer who fails to furnish an employee or former employee with a pay stub as required by this Act or commits any other violation of this Act shall be subject to a civil penalty of up to \$500 per violation payable to the Department. In determining the amount of the penalty under this subsection, the Department shall consider the appropriateness of the penalty to the size of the business of the employer charged and the gravity of the violation.

Public Act 103-0953

SB3208 Enrolled

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(Source: P.A. 102-50, eff. 7-9-21; 103-182, eff. 6-30-23.)