



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

HB3918

Introduced 10/17/2019, by Rep. Curtis J. Tarver, II

SYNOPSIS AS INTRODUCED:

820 ILCS 105/12

from Ch. 48, par. 1012

Amends the Minimum Wage Law. In a provision concerning an employer's liability for unpaid wages, provides that the Department of Labor shall, by rule, devise an administrative process by which any fine levied against the employer may be reduced upon a showing by the employer that the employer: (i) had not previously committed a violation of the Minimum Wage Law; and (ii) had not acted willfully, wantonly, or recklessly. Effective immediately.

LRB101 14517 TAE 63412 b

FISCAL NOTE ACT
MAY APPLY

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 12 as follows:

6 (820 ILCS 105/12) (from Ch. 48, par. 1012)

7 Sec. 12. (a) If any employee is paid by his employer less
8 than the wage to which he is entitled under the provisions of
9 this Act, the employee may recover in a civil action treble the
10 amount of any such underpayments together with costs and such
11 reasonable attorney's fees as may be allowed by the Court, and
12 damages of 5% of the amount of any such underpayments for each
13 month following the date of payment during which such
14 underpayments remain unpaid. Any agreement between the
15 employee and the employer to work for less than such wage is no
16 defense to such action. At the request of the employee or on
17 motion of the Director of Labor, the Department of Labor may
18 make an assignment of such wage claim in trust for the
19 assigning employee and may bring any legal action necessary to
20 collect such claim, and the employer shall be required to pay
21 the costs incurred in collecting such claim. Every such action
22 shall be brought within 3 years from the date of the
23 underpayment. Such employer shall be liable to the Department

1 of Labor for up to 20% of the total employer's underpayment
2 where the employer's conduct is proven by a preponderance of
3 the evidence to be willful, repeated, or with reckless
4 disregard of this Act or any rule adopted under this Act. Such
5 employer shall be liable to the Department for an additional
6 penalty of \$1,500, payable to the Department's Wage Theft
7 Enforcement Fund. Such employer shall be additionally liable to
8 the employee for damages in the amount of 5% of the amount of
9 any such underpayments for each month following the date of
10 payment during which such underpayments remain unpaid. These
11 penalties and damages may be recovered in a civil action
12 brought by the Director of Labor in any circuit court. In any
13 such action, the Director of Labor shall be represented by the
14 Attorney General.

15 If an employee collects damages of 5% of the amount of
16 underpayments as a result of an action brought by the Director
17 of Labor, the employee may not also collect those damages in a
18 private action brought by the employee for the same violation.
19 If an employee collects damages of 5% of the amount of
20 underpayments in a private action brought by the employee, the
21 employee may not also collect those damages as a result of an
22 action brought by the Director of Labor for the same violation.

23 (b) If an employee has not collected damages under
24 subsection (a) for the same violation, the Director is
25 authorized to supervise the payment of the unpaid minimum wages
26 and the unpaid overtime compensation owing to any employee or

1 employees under Sections 4 and 4a of this Act and may bring any
2 legal action necessary to recover the amount of the unpaid
3 minimum wages and unpaid overtime compensation and an equal
4 additional amount as damages, and the employer shall be
5 required to pay the costs incurred in collecting such claim.
6 Such employer shall be additionally liable to the Department of
7 Labor for up to 20% of the total employer's underpayment where
8 the employer's conduct is proven by a preponderance of the
9 evidence to be willful, repeated, or with reckless disregard of
10 this Act or any rule adopted under this Act. Such employer
11 shall be liable to the Department of Labor for an additional
12 penalty of \$1,500, payable to the Department's Wage Theft
13 Enforcement Fund. The action shall be brought within 5 years
14 from the date of the failure to pay the wages or compensation.
15 Any sums thus recovered by the Director on behalf of an
16 employee pursuant to this subsection shall be paid to the
17 employee or employees affected. Any sums which, more than one
18 year after being thus recovered, the Director is unable to pay
19 to an employee shall be deposited into the General Revenue
20 Fund.

21 (c) The Department shall, by rule, devise an administrative
22 process by which a fine levied under this Section may be
23 reduced upon a showing by the employer that the employer: (i)
24 had not previously committed a violation of this Act; and (ii)
25 had not acted willfully, wantonly, or recklessly.

26 (Source: P.A. 101-1, eff. 2-19-19.)

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