



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

HB2965

Introduced 2/19/2021, by Rep. Dan Ugaste

SYNOPSIS AS INTRODUCED:

820 ILCS 305/1

from Ch. 48, par. 138.1

Amends the Workers' Compensation Act concerning injuries sustained by employees during travel. Provides that accidental injuries sustained while traveling to or from work do not arise out of and in the course of employment, except under specified circumstances. Provides that the injury may arise out of and in the course of employment if, at the time of the injury, the employee was performing acts the employer instructed the employee to perform, acts that the employee had a common law or statutory duty to perform while performing duties for his employer, or acts that the employee might be reasonably expected to perform incident to his assigned duties. Effective immediately.

LRB102 10872 JLS 16202 b

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 Workers' Compensation Act is amended by
5 changing Section 1 as follows:

6 (820 ILCS 305/1) (from Ch. 48, par. 138.1)

7 Sec. 1. This Act may be cited as the Workers' Compensation
8 Act.

9 (a) The term "employer" as used in this Act means:

10 1. The State and each county, city, town, township,
11 incorporated village, school district, body politic, or
12 municipal corporation therein.

13 2. Every person, firm, public or private corporation,
14 including hospitals, public service, eleemosynary, religious
15 or charitable corporations or associations who has any person
16 in service or under any contract for hire, express or implied,
17 oral or written, and who is engaged in any of the enterprises
18 or businesses enumerated in Section 3 of this Act, or who at or
19 prior to the time of the accident to the employee for which
20 compensation under this Act may be claimed, has in the manner
21 provided in this Act elected to become subject to the
22 provisions of this Act, and who has not, prior to such
23 accident, effected a withdrawal of such election in the manner

1 provided in this Act.

2 3. Any one engaging in any business or enterprise referred
3 to in subsections 1 and 2 of Section 3 of this Act who
4 undertakes to do any work enumerated therein, is liable to pay
5 compensation to his own immediate employees in accordance with
6 the provisions of this Act, and in addition thereto if he
7 directly or indirectly engages any contractor whether
8 principal or sub-contractor to do any such work, he is liable
9 to pay compensation to the employees of any such contractor or
10 sub-contractor unless such contractor or sub-contractor has
11 insured, in any company or association authorized under the
12 laws of this State to insure the liability to pay compensation
13 under this Act, or guaranteed his liability to pay such
14 compensation. With respect to any time limitation on the
15 filing of claims provided by this Act, the timely filing of a
16 claim against a contractor or subcontractor, as the case may
17 be, shall be deemed to be a timely filing with respect to all
18 persons upon whom liability is imposed by this paragraph.

19 In the event any such person pays compensation under this
20 subsection he may recover the amount thereof from the
21 contractor or sub-contractor, if any, and in the event the
22 contractor pays compensation under this subsection he may
23 recover the amount thereof from the sub-contractor, if any.

24 This subsection does not apply in any case where the
25 accident occurs elsewhere than on, in or about the immediate
26 premises on which the principal has contracted that the work

1 be done.

2 4. Where an employer operating under and subject to the
3 provisions of this Act loans an employee to another such
4 employer and such loaned employee sustains a compensable
5 accidental injury in the employment of such borrowing employer
6 and where such borrowing employer does not provide or pay the
7 benefits or payments due such injured employee, such loaning
8 employer is liable to provide or pay all benefits or payments
9 due such employee under this Act and as to such employee the
10 liability of such loaning and borrowing employers is joint and
11 several, provided that such loaning employer is in the absence
12 of agreement to the contrary entitled to receive from such
13 borrowing employer full reimbursement for all sums paid or
14 incurred pursuant to this paragraph together with reasonable
15 attorneys' fees and expenses in any hearings before the
16 Illinois Workers' Compensation Commission or in any action to
17 secure such reimbursement. Where any benefit is provided or
18 paid by such loaning employer the employee has the duty of
19 rendering reasonable cooperation in any hearings, trials or
20 proceedings in the case, including such proceedings for
21 reimbursement.

22 Where an employee files an Application for Adjustment of
23 Claim with the Illinois Workers' Compensation Commission
24 alleging that his claim is covered by the provisions of the
25 preceding paragraph, and joining both the alleged loaning and
26 borrowing employers, they and each of them, upon written

1 demand by the employee and within 7 days after receipt of such
2 demand, shall have the duty of filing with the Illinois
3 Workers' Compensation Commission a written admission or denial
4 of the allegation that the claim is covered by the provisions
5 of the preceding paragraph and in default of such filing or if
6 any such denial be ultimately determined not to have been bona
7 fide then the provisions of Paragraph K of Section 19 of this
8 Act shall apply.

9 An employer whose business or enterprise or a substantial
10 part thereof consists of hiring, procuring or furnishing
11 employees to or for other employers operating under and
12 subject to the provisions of this Act for the performance of
13 the work of such other employers and who pays such employees
14 their salary or wages notwithstanding that they are doing the
15 work of such other employers shall be deemed a loaning
16 employer within the meaning and provisions of this Section.

17 (b) The term "employee" as used in this Act means:

18 1. Every person in the service of the State, including
19 members of the General Assembly, members of the Commerce
20 Commission, members of the Illinois Workers' Compensation
21 Commission, and all persons in the service of the University
22 of Illinois, county, including deputy sheriffs and assistant
23 state's attorneys, city, town, township, incorporated village
24 or school district, body politic, or municipal corporation
25 therein, whether by election, under appointment or contract of
26 hire, express or implied, oral or written, including all

1 members of the Illinois National Guard while on active duty in
2 the service of the State, and all probation personnel of the
3 Juvenile Court appointed pursuant to Article VI of the
4 Juvenile Court Act of 1987, and including any official of the
5 State, any county, city, town, township, incorporated village,
6 school district, body politic or municipal corporation therein
7 except any duly appointed member of a police department in any
8 city whose population exceeds 500,000 according to the last
9 Federal or State census, and except any member of a fire
10 insurance patrol maintained by a board of underwriters in this
11 State. A duly appointed member of a fire department in any
12 city, the population of which exceeds 500,000 according to the
13 last federal or State census, is an employee under this Act
14 only with respect to claims brought under paragraph (c) of
15 Section 8.

16 One employed by a contractor who has contracted with the
17 State, or a county, city, town, township, incorporated
18 village, school district, body politic or municipal
19 corporation therein, through its representatives, is not
20 considered as an employee of the State, county, city, town,
21 township, incorporated village, school district, body politic
22 or municipal corporation which made the contract.

23 2. Every person in the service of another under any
24 contract of hire, express or implied, oral or written,
25 including persons whose employment is outside of the State of
26 Illinois where the contract of hire is made within the State of

1 Illinois, persons whose employment results in fatal or
2 non-fatal injuries within the State of Illinois where the
3 contract of hire is made outside of the State of Illinois, and
4 persons whose employment is principally localized within the
5 State of Illinois, regardless of the place of the accident or
6 the place where the contract of hire was made, and including
7 aliens, and minors who, for the purpose of this Act are
8 considered the same and have the same power to contract,
9 receive payments and give quittances therefor, as adult
10 employees.

11 3. Every sole proprietor and every partner of a business
12 may elect to be covered by this Act.

13 An employee or his dependents under this Act who shall
14 have a cause of action by reason of any injury, disablement or
15 death arising out of and in the course of his employment may
16 elect to pursue his remedy in the State where injured or
17 disabled, or in the State where the contract of hire is made,
18 or in the State where the employment is principally localized.

19 However, any employer may elect to provide and pay
20 compensation to any employee other than those engaged in the
21 usual course of the trade, business, profession or occupation
22 of the employer by complying with Sections 2 and 4 of this Act.
23 Employees are not included within the provisions of this Act
24 when excluded by the laws of the United States relating to
25 liability of employers to their employees for personal
26 injuries where such laws are held to be exclusive.

1 The term "employee" does not include persons performing
2 services as real estate broker, broker-salesman, or salesman
3 when such persons are paid by commission only.

4 (c) "Commission" means the Industrial Commission created
5 by Section 5 of "The Civil Administrative Code of Illinois",
6 approved March 7, 1917, as amended, or the Illinois Workers'
7 Compensation Commission created by Section 13 of this Act.

8 (d) To obtain compensation under this Act, an employee
9 bears the burden of showing, by a preponderance of the
10 evidence, that he or she has sustained accidental injuries
11 arising out of and in the course of the employment.

12 Except as provided in subsection (e), accidental injuries
13 sustained while traveling to or from work do not arise out of
14 and in the course of employment.

15 (e) An accidental injury arises out of and in the course of
16 employment if it is sustained by an employee who is required by
17 the employer to travel away from the employer's premises in
18 order to perform his or her job and the conduct in which the
19 employee was engaged at the time of the accidental injury was:
20 (1) acts the employer instructed the employee to perform; (2)
21 acts that the employee had a common law or statutory duty to
22 perform while performing duties for his employer; or (3) acts
23 that the employee might be reasonably expected to perform
24 incident to his assigned duties.

25 Notwithstanding the foregoing, an accidental injury
26 sustained by an employee while traveling away from the

1 employer's premises does not arise out of and in the course of
2 employment if: (1) the accidental injury is sustained during
3 the employee's commute to and from his or her domicile,
4 residence, or place where the employee currently lives and his
5 or her primary or current place of employment; (2) the
6 accidental injury is sustained during a personal deviation or
7 personal errand; (3) the accidental injury, or the medical
8 condition or impairment for which compensation is sought,
9 resulted from a personal risk.

10 In determining whether an employee is required to travel
11 away from the employer's premises in order to perform his or
12 her job, the following factors, shall be considered:

13 (1) whether the employee's course or method of travel
14 was determined by the demands and exigencies of the job;

15 (2) whether the employer reimbursed the employee for
16 travel expenses or time spent traveling; and

17 (3) whether the employer directed the employee's
18 travel or required the employee to take a certain route to
19 perform his or her duties.

20 (Source: P.A. 97-18, eff. 6-28-11; 97-268, eff. 8-8-11;
21 97-813, eff. 7-13-12.)

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