



Sen. Kyle McCarter

Filed: 4/8/2016

09900SB2698sam001

LRB099 16939 JLS 47132 a

1 AMENDMENT TO SENATE BILL 2698

2 AMENDMENT NO. _____. Amend Senate Bill 2698 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Personnel Record Review Act is amended by
5 changing Section 1 as follows:

6 (820 ILCS 40/1) (from Ch. 48, par. 2001)

7 Sec. 1. Definitions. As used in this Act:

8 (a) "Employee" has the meaning ascribed to that term in the
9 Fair Labor Standards Act of 1938, 29 U.S.C. 203, and also
10 includes ~~means~~ a person currently employed or subject to recall
11 after layoff or leave of absence with a right to return at a
12 position with an employer or a former employee who has
13 terminated service within the preceding year.

14 (b) "Employer" means an individual, corporation,
15 partnership, labor organization, unincorporated association,
16 the State, an agency or a political subdivision of the State,

1 or any other legal, business, or commercial entity which has 5
2 employees or more than 5 employees exclusive of the employer's
3 parent, spouse or child or other members of his immediate
4 family and includes an agent of the employer.

5 (c) "Employ" has the meaning ascribed to that term in the
6 Fair Labor Standards Act of 1938, 29 U.S.C. 203.

7 (Source: P.A. 83-1339.)

8 Section 10. The Right to Privacy in the Workplace Act is
9 amended by adding Section 3 as follows:

10 (820 ILCS 55/3 new)

11 Sec. 3. Definitions. As used in this Act:

12 "Employee" has the meaning ascribed to that term in the
13 Fair Labor Standards Act of 1938, 29 U.S.C. 203.

14 "Employ" has the meaning ascribed to that term in the Fair
15 Labor Standards Act of 1938, 29 U.S.C. 203.

16 Section 15. The Minimum Wage Law is amended by changing
17 Section 3 as follows:

18 (820 ILCS 105/3) (from Ch. 48, par. 1003)

19 Sec. 3. As used in this Act:

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

22 (b) "Wages" means compensation due to an employee by reason

1 of his employment, including allowances determined by the
2 Director in accordance with the provisions of this Act for
3 gratuities and, when furnished by the employer, for meals and
4 lodging actually used by the employee.

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

15 (c-1) "Employ" has the meaning ascribed to that term in the
16 Fair Labor Standards Act of 1938, 29 U.S.C. 203.

17 (d) "Employee" has the meaning ascribed to that term in the
18 Fair Labor Standards Act of 1938, 29 U.S.C. 203 ~~includes any~~
19 ~~individual permitted to work by an employer in an occupation,~~
20 but does not include any individual permitted to work:

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

24 (2) As an employee employed in agriculture or
25 aquaculture (A) if such employee is employed by an employer
26 who did not, during any calendar quarter during the

1 preceding calendar year, use more than 500 man-days of
2 agricultural or aquacultural labor, (B) if such employee is
3 the parent, spouse or child, or other member of the
4 employer's immediate family, (C) if such employee (i) is
5 employed as a hand harvest laborer and is paid on a piece
6 rate basis in an operation which has been, and is
7 customarily and generally recognized as having been, paid
8 on a piece rate basis in the region of employment, (ii)
9 commutes daily from his permanent residence to the farm on
10 which he is so employed, and (iii) has been employed in
11 agriculture less than 13 weeks during the preceding
12 calendar year, (D) if such employee (other than an employee
13 described in clause (C) of this subparagraph): (i) is 16
14 years of age or under and is employed as a hand harvest
15 laborer, is paid on a piece rate basis in an operation
16 which has been, and is customarily and generally recognized
17 as having been, paid on a piece rate basis in the region of
18 employment, (ii) is employed on the same farm as his parent
19 or person standing in the place of his parent, and (iii) is
20 paid at the same piece rate as employees over 16 are paid
21 on the same farm.

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

23 (4) As an outside salesman.

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

26 (6) At an accredited Illinois college or university

1 employed by the college or university at which he is a
2 student who is covered under the provisions of the Fair
3 Labor Standards Act of 1938, as heretofore or hereafter
4 amended.

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

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

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

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

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

23 (h) "Day camp" means a seasonal recreation program in
24 operation for no more than 16 weeks intermittently throughout
25 the calendar year, accommodating for profit or under
26 philanthropic or charitable auspices, 5 or more children under

1 18 years of age, not including overnight programs. The term
2 "day camp" does not include a "day care agency", "child care
3 facility" or "foster family home" as licensed by the Illinois
4 Department of Children and Family Services.

5 (Source: P.A. 94-1025, eff. 7-14-06; 95-945, eff. 1-1-09.)

6 Section 20. The Equal Pay Act of 2003 is amended by
7 changing Section 5 as follows:

8 (820 ILCS 112/5)

9 Sec. 5. Definitions. As used in this Act:

10 "Director" means the Director of Labor.

11 "Department" means the Department of Labor.

12 "Employee" has the meaning ascribed to that term in the
13 Fair Labor Standards Act of 1938, 29 U.S.C. 203 ~~means any~~
14 ~~individual permitted to work by an employer.~~

15 "Employ" has the meaning ascribed to that term in the Fair
16 Labor Standards Act of 1938, 29 U.S.C. 203.

17 "Employer" means an individual, partnership, corporation,
18 association, business, trust, person, or entity for whom
19 employees are gainfully employed in Illinois and includes the
20 State of Illinois, any state officer, department, or agency,
21 any unit of local government, and any school district.

22 (Source: P.A. 99-418, eff. 1-1-16.)

23 Section 25. The Illinois Wage Payment and Collection Act is

1 amended by changing Section 2 as follows:

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

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

20 As used in this Act, the term "employer" shall include any
21 individual, partnership, association, corporation, limited
22 liability company, business trust, employment and labor
23 placement agencies where wage payments are made directly or
24 indirectly by the agency or business for work undertaken by
25 employees under hire to a third party pursuant to a contract

1 between the business or agency with the third party, or any
2 person or group of persons acting directly or indirectly in the
3 interest of an employer in relation to an employee, for which
4 one or more persons is gainfully employed.

5 As used in this Act, the term "employee" has the meaning
6 ascribed to that term in the Fair Labor Standards Act of 1938,
7 29 U.S.C. 203. ~~shall include any individual permitted to work~~
8 ~~by an employer in an occupation, but shall not include any~~
9 ~~individual:~~

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

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

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

21 As used in this Act, the term "employ" has the meaning
22 ascribed to that term in the Fair Labor Standards Act of 1938,
23 29 U.S.C. 203.

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

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

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

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

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

11 Section 30. The One Day Rest In Seven Act is amended by
12 changing Section 1 as follows:

13 (820 ILCS 140/1) (from Ch. 48, par. 8a)

14 Sec. 1.

15 The words and phrases mentioned in this section, as used in
16 this Act, and in proceedings pursuant hereto shall, unless the
17 same be inconsistent with the context, be construed as follows:

18 "Employer" shall mean a person, partnership, joint stock
19 company or corporation, which employs any person to work, labor
20 or exercise skill in connection with the operation of any
21 business, industry, vocation or occupation.

22 "Employee" has the meaning ascribed to that term in the
23 Fair Labor Standards Act of 1938, 29 U.S.C. 203.

24 "Employ" has the meaning ascribed to that term in the Fair

1 Labor Standards Act of 1938, 29 U.S.C. 203.

2 (Source: P.A. 78-917.)

3 Section 35. The School Visitation Rights Act is amended by
4 changing Section 10 as follows:

5 (820 ILCS 147/10)

6 Sec. 10. Definitions. As used in this Act:

7 (a) "Employee" has the meaning ascribed to that term in the
8 Fair Labor Standards Act of 1938, 29 U.S.C. 203, and also
9 includes ~~means~~ a person who performs services for hire for an
10 employer for:

11 (1) at least 6 consecutive months immediately
12 preceding a request for leave under this Act; and

13 (2) an average number of hours per week equal to at
14 least one-half the full-time equivalent position in the
15 employer's job classification, as defined by the
16 employer's personnel policies or practices or in
17 accordance with a collective bargaining agreement, during
18 those 6 months.

19 "Employee" includes all individuals meeting the above
20 criteria but does not include an independent contractor.

21 (a-1) "Employ" has the meaning ascribed to that term in the
22 Fair Labor Standards Act of 1938, 29 U.S.C. 203.

23 (b) "Employer" means any of the following: a State agency,
24 officer, or department, a unit of local government, a school

1 district, an individual, a corporation, a partnership, an
2 association, or a nonprofit organization.

3 (c) "Child" means a biological, adopted or foster child, a
4 stepchild or a legal ward of an employee and who is enrolled in
5 a primary or secondary public or private school in this State
6 or a state which shares a common boundary with Illinois.

7 (d) "School" means any public or private primary or
8 secondary school or educational facility located in this State
9 or a state which shares a common boundary with Illinois.

10 (e) "School administrator" means the principal or similar
11 administrator who is responsible for the operations of the
12 school.

13 (Source: P.A. 87-1240.)

14 Section 40. The Victims' Economic Security and Safety Act
15 is amended by changing Section 10 as follows:

16 (820 ILCS 180/10)

17 Sec. 10. Definitions. In this Act, except as otherwise
18 expressly provided:

19 (1) "Commerce" includes trade, traffic, commerce,
20 transportation, or communication; and "industry or
21 activity affecting commerce" means any activity, business,
22 or industry in commerce or in which a labor dispute would
23 hinder or obstruct commerce or the free flow of commerce,
24 and includes "commerce" and any "industry affecting

1 commerce".

2 (2) "Course of conduct" means a course of repeatedly
3 maintaining a visual or physical proximity to a person or
4 conveying oral or written threats, including threats
5 conveyed through electronic communications, or threats
6 implied by conduct.

7 (3) "Department" means the Department of Labor.

8 (4) "Director" means the Director of Labor.

9 (5) "Domestic or sexual violence" means domestic
10 violence, sexual assault, or stalking.

11 (6) "Domestic violence" means abuse, as defined in
12 Section 103 of the Illinois Domestic Violence Act of 1986,
13 by a family or household member, as defined in Section 103
14 of the Illinois Domestic Violence Act of 1986.

15 (7) "Electronic communications" includes
16 communications via telephone, mobile phone, computer,
17 e-mail, video recorder, fax machine, telex, or pager, or
18 any other electronic communication, as defined in Section
19 12-7.5 of the Criminal Code of 2012.

20 (8) "Employ" has the meaning ascribed to that term in
21 the Fair Labor Standards Act of 1938, 29 U.S.C. 203
22 ~~includes to suffer or permit to work.~~

23 (9) Employee.

24 (A) In general. "Employee" has the meaning
25 ascribed to that term in the Fair Labor Standards Act
26 of 1938, 29 U.S.C. 203 ~~means any person employed by an~~

1 ~~employer.~~

2 (B) Basis. "Employee" includes a person employed
3 as described in subparagraph (A) on a full or part-time
4 basis, or as a participant in a work assignment as a
5 condition of receipt of federal or State income-based
6 public assistance.

7 (10) "Employer" means any of the following: (A) the
8 State or any agency of the State; (B) any unit of local
9 government or school district; or (C) any person that
10 employs at least 15 employees.

11 (11) "Employment benefits" means all benefits provided
12 or made available to employees by an employer, including
13 group life insurance, health insurance, disability
14 insurance, sick leave, annual leave, educational benefits,
15 pensions, and profit-sharing, regardless of whether such
16 benefits are provided by a practice or written policy of an
17 employer or through an "employee benefit plan". "Employee
18 benefit plan" or "plan" means an employee welfare benefit
19 plan or an employee pension benefit plan or a plan which is
20 both an employee welfare benefit plan and an employee
21 pension benefit plan.

22 (12) "Family or household member", for employees with a
23 family or household member who is a victim of domestic or
24 sexual violence, means a spouse, parent, son, daughter,
25 other person related by blood or by present or prior
26 marriage, other person who shares a relationship through a

1 son or daughter, and persons jointly residing in the same
2 household.

3 (13) "Parent" means the biological parent of an
4 employee or an individual who stood in loco parentis to an
5 employee when the employee was a son or daughter. "Son or
6 daughter" means a biological, adopted, or foster child, a
7 stepchild, a legal ward, or a child of a person standing in
8 loco parentis, who is under 18 years of age, or is 18 years
9 of age or older and incapable of self-care because of a
10 mental or physical disability.

11 (14) "Perpetrator" means an individual who commits or
12 is alleged to have committed any act or threat of domestic
13 or sexual violence.

14 (15) "Person" means an individual, partnership,
15 association, corporation, business trust, legal
16 representative, or any organized group of persons.

17 (16) "Public agency" means the Government of the State
18 or political subdivision thereof; any agency of the State,
19 or of a political subdivision of the State; or any
20 governmental agency.

21 (17) "Public assistance" includes cash, food stamps,
22 medical assistance, housing assistance, and other benefits
23 provided on the basis of income by a public agency or
24 public employer.

25 (18) "Reduced work schedule" means a work schedule that
26 reduces the usual number of hours per workweek, or hours

1 per workday, of an employee.

2 (19) "Repeatedly" means on 2 or more occasions.

3 (20) "Sexual assault" means any conduct proscribed by
4 the Criminal Code of 1961 or the Criminal Code of 2012 in
5 Sections 11-1.20, 11-1.30, 11-1.40, 11-1.50, 11-1.60,
6 12-13, 12-14, 12-14.1, 12-15, and 12-16.

7 (21) "Stalking" means any conduct proscribed by the
8 Criminal Code of 1961 or the Criminal Code of 2012 in
9 Sections 12-7.3, 12-7.4, and 12-7.5.

10 (22) "Victim" or "survivor" means an individual who has
11 been subjected to domestic or sexual violence.

12 (23) "Victim services organization" means a nonprofit,
13 nongovernmental organization that provides assistance to
14 victims of domestic or sexual violence or to advocates for
15 such victims, including a rape crisis center, an
16 organization carrying out a domestic violence program, an
17 organization operating a shelter or providing counseling
18 services, or a legal services organization or other
19 organization providing assistance through the legal
20 process.

21 (Source: P.A. 96-635, eff. 8-24-09; 96-1551, eff. 7-1-11;
22 97-1150, eff. 1-25-13.)

23 Section 45. The Employee Classification Act is amended by
24 changing Sections 5, 15, 20, and 25 as follows:

1 (820 ILCS 185/5)

2 Sec. 5. Definitions. As used in this Act:

3 "Construction" means any constructing, altering,
4 reconstructing, repairing, rehabilitating, refinishing,
5 refurbishing, remodeling, remediating, renovating, custom
6 fabricating, maintenance, landscaping, improving, wrecking,
7 painting, decorating, demolishing, and adding to or
8 subtracting from any building, structure, highway, roadway,
9 street, bridge, alley, sewer, ditch, sewage disposal plant,
10 water works, parking facility, railroad, excavation or other
11 structure, project, development, real property or improvement,
12 or to do any part thereof, whether or not the performance of
13 the work herein described involves the addition to, or
14 fabrication into, any structure, project, development, real
15 property or improvement herein described of any material or
16 article of merchandise. Construction shall also include moving
17 construction related materials on the job site to or from the
18 job site.

19 "Contractor" means any individual, sole proprietor,
20 partnership, firm, corporation, limited liability company,
21 association or other legal entity permitted by law to do
22 business within the State of Illinois who engages in
23 construction as defined in this Act.

24 "Contractor" includes a general contractor and a
25 subcontractor.

26 "Department" means the Department of Labor.

1 "Director" means the Director of the Department of Labor.

2 "Employee" has the meaning ascribed to that term in the
3 Fair Labor Standards Act of 1938, 29 U.S.C. 203.

4 "Employer" means any contractor that employs individuals
5 deemed employees under ~~Section 10~~ of this Act; however,
6 "employer" does not include (i) the State of Illinois or its
7 officers, agencies, or political subdivisions or (ii) the
8 federal government.

9 "Entity" means any contractor for which an individual is
10 performing services and is not classified as an employee ~~under~~
11 ~~Section 10 of this Act~~; however, "entity" does not include (i)
12 the State of Illinois or its officers, agencies, or political
13 subdivisions or (ii) the federal government.

14 "Interested party" means a person with an interest in
15 compliance with this Act.

16 "Performing services" means the performance of any
17 constructing, altering, reconstructing, repairing,
18 rehabilitating, refinishing, refurbishing, remodeling,
19 remediating, renovating, custom fabricating, maintenance,
20 landscaping, improving, wrecking, painting, decorating,
21 demolishing, and adding to or subtracting from any building,
22 structure, highway, roadway, street, bridge, alley, sewer,
23 ditch, sewage disposal plant, water works, parking facility,
24 railroad, excavation or other structure, project, development,
25 real property or improvement, or to do any part thereof,
26 whether or not the performance of the work herein described

1 involves the addition to, or fabrication into, any structure,
2 project, development, real property or improvement herein
3 described of any material or article of merchandise.
4 Construction shall also include moving construction related
5 materials on the job site to or from the job site.

6 (Source: P.A. 98-106, eff. 1-1-14.)

7 (820 ILCS 185/15)

8 Sec. 15. Notice.

9 (a) The Department shall post a summary of the requirements
10 of this Act in English, Spanish, and Polish on its official web
11 site and on bulletin boards in each of its offices.

12 (b) An entity for whom one or more individuals perform
13 services who are not classified as employees under ~~Section 10~~
14 ~~of~~ this Act shall post and keep posted, in a conspicuous place
15 on each job site where those individuals perform services and
16 in each of its offices, a notice in English, Spanish, and
17 Polish, prepared by the Department, summarizing the
18 requirements of this Act. The Department shall furnish copies
19 of summaries without charge to entities upon request.

20 (Source: P.A. 95-26, eff. 1-1-08.)

21 (820 ILCS 185/20)

22 Sec. 20. Failure to properly designate or classify
23 individuals performing services as employees. It is a violation
24 of this Act for an employer or entity not to designate an

1 individual as an employee under ~~Section 10~~ of this Act unless
2 the employer or entity satisfies the provisions of Section 10
3 of this Act.

4 (Source: P.A. 95-26, eff. 1-1-08.)

5 (820 ILCS 185/25)

6 Sec. 25. Enforcement.

7 (a) Any interested party may file a complaint with the
8 Department against an entity or employer covered under this Act
9 if there is a reasonable belief that the entity or employer is
10 in violation of this Act. It shall be the duty of the
11 Department to enforce the provisions of this Act. The
12 Department shall have the power to conduct investigations in
13 connection with the administration and enforcement of this Act
14 and any investigator with the Department shall be authorized to
15 visit and inspect, at all reasonable times, any places covered
16 by this Act and shall be authorized to inspect, at all
17 reasonable times, documents related to the determination of
18 whether an individual is an employee under ~~Section 10~~ of this
19 Act. The Director of Labor or his or her representative may
20 compel, by subpoena, the attendance and testimony of witnesses
21 and the production of books, payrolls, records, papers, and
22 other evidence in any investigation and may administer oaths to
23 witnesses. Within 120 days of the filing of a complaint, the
24 Department shall notify the employer in writing of the filing
25 of a complaint and provide the employer the location and

1 approximate date of the project or projects, affected
2 contractors, and the nature of the allegations being
3 investigated.

4 (b) Whenever the Department believes upon investigation
5 that there has been a violation of any of the provisions of
6 this Act or any rules or regulations promulgated under this
7 Act, the Department may: (i) issue and cause to be served on
8 any party an order to cease and desist from further violation
9 of the Act, (ii) take affirmative or other action as deemed
10 reasonable to eliminate the effect of the violation, (iii)
11 collect the amount of any wages, salary, employment benefits,
12 or other compensation denied or lost to the individual, and
13 (iv) assess any civil penalty allowed by this Act.

14 (c) If, upon investigation, the Department finds cause to
15 believe that Section 20 or Section 55 of this Act has been
16 violated, the Department shall notify the employer, in writing,
17 of its finding and any proposed relief due and penalties
18 assessed and that the matter will be referred to an
19 Administrative Law Judge to schedule a formal hearing in
20 accordance with the Illinois Administrative Procedure Act.

21 (d) The employer has 28 calendar days from the date of the
22 Department's findings to answer the allegations contained in
23 the Department's findings. If an employer fails to answer all
24 allegations contained in the Department's findings, any
25 unanswered allegations or findings shall be deemed admitted to
26 be true and shall be found true in the final decision issued by

1 the Administrative Law Judge. If, within 30 calendar days of
2 the final decision issued by the Administrative Law Judge, the
3 employer files a motion to vacate the Administrative Law
4 Judge's final decision and demonstrates good cause for failing
5 to answer the Department's allegations, and the Administrative
6 Law Judge grants the motion, the employer shall be afforded an
7 opportunity to answer and the matter shall proceed as if an
8 original answer to the Department's findings had been filed.

9 (e) A final decision of an Administrative Law Judge issued
10 pursuant to this Section is subject to the provisions of the
11 Administrative Review Law and shall be enforceable in an action
12 brought in the name of the people of the State of Illinois by
13 the Attorney General.

14 (Source: P.A. 98-106, eff. 1-1-14.)

15 (820 ILCS 185/10 rep.)

16 Section 50. The Employee Classification Act is amended by
17 repealing Section 10.

18 Section 55. The Workers' Compensation Act is amended by
19 changing Section 1 as follows:

20 (820 ILCS 305/1) (from Ch. 48, par. 138.1)

21 Sec. 1. This Act may be cited as the Workers' Compensation
22 Act.

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

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

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

16 3. Any one engaging in any business or enterprise referred
17 to in subsections 1 and 2 of Section 3 of this Act who
18 undertakes to do any work enumerated therein, is liable to pay
19 compensation to his own immediate employees in accordance with
20 the provisions of this Act, and in addition thereto if he
21 directly or indirectly engages any contractor whether
22 principal or sub-contractor to do any such work, he is liable
23 to pay compensation to the employees of any such contractor or
24 sub-contractor unless such contractor or sub-contractor has
25 insured, in any company or association authorized under the
26 laws of this State to insure the liability to pay compensation

1 under this Act, or guaranteed his liability to pay such
2 compensation. With respect to any time limitation on the filing
3 of claims provided by this Act, the timely filing of a claim
4 against a contractor or subcontractor, as the case may be,
5 shall be deemed to be a timely filing with respect to all
6 persons upon whom liability is imposed by this paragraph.

7 In the event any such person pays compensation under this
8 subsection he may recover the amount thereof from the
9 contractor or sub-contractor, if any, and in the event the
10 contractor pays compensation under this subsection he may
11 recover the amount thereof from the sub-contractor, if any.

12 This subsection does not apply in any case where the
13 accident occurs elsewhere than on, in or about the immediate
14 premises on which the principal has contracted that the work be
15 done.

16 4. Where an employer operating under and subject to the
17 provisions of this Act loans an employee to another such
18 employer and such loaned employee sustains a compensable
19 accidental injury in the employment of such borrowing employer
20 and where such borrowing employer does not provide or pay the
21 benefits or payments due such injured employee, such loaning
22 employer is liable to provide or pay all benefits or payments
23 due such employee under this Act and as to such employee the
24 liability of such loaning and borrowing employers is joint and
25 several, provided that such loaning employer is in the absence
26 of agreement to the contrary entitled to receive from such

1 borrowing employer full reimbursement for all sums paid or
2 incurred pursuant to this paragraph together with reasonable
3 attorneys' fees and expenses in any hearings before the
4 Illinois Workers' Compensation Commission or in any action to
5 secure such reimbursement. Where any benefit is provided or
6 paid by such loaning employer the employee has the duty of
7 rendering reasonable cooperation in any hearings, trials or
8 proceedings in the case, including such proceedings for
9 reimbursement.

10 Where an employee files an Application for Adjustment of
11 Claim with the Illinois Workers' Compensation Commission
12 alleging that his claim is covered by the provisions of the
13 preceding paragraph, and joining both the alleged loaning and
14 borrowing employers, they and each of them, upon written demand
15 by the employee and within 7 days after receipt of such demand,
16 shall have the duty of filing with the Illinois Workers'
17 Compensation Commission a written admission or denial of the
18 allegation that the claim is covered by the provisions of the
19 preceding paragraph and in default of such filing or if any
20 such denial be ultimately determined not to have been bona fide
21 then the provisions of Paragraph K of Section 19 of this Act
22 shall apply.

23 An employer whose business or enterprise or a substantial
24 part thereof consists of hiring, procuring or furnishing
25 employees to or for other employers operating under and subject
26 to the provisions of this Act for the performance of the work

1 of such other employers and who pays such employees their
2 salary or wages notwithstanding that they are doing the work of
3 such other employers shall be deemed a loaning employer within
4 the meaning and provisions of this Section.

5 (a-1) The term "employ" as used in this Act has the meaning
6 ascribed to that term in the Fair Labor Standards Act of 1938,
7 29 U.S.C. 203.

8 (b) The term "employee" as used in this Act has the meaning
9 ascribed to that term in the Fair Labor Standards Act of 1938,
10 29 U.S.C. 203, and also includes ~~means~~:

11 1. Every person in the service of the State, including
12 members of the General Assembly, members of the Commerce
13 Commission, members of the Illinois Workers' Compensation
14 Commission, and all persons in the service of the University of
15 Illinois, county, including deputy sheriffs and assistant
16 state's attorneys, city, town, township, incorporated village
17 or school district, body politic, or municipal corporation
18 therein, whether by election, under appointment or contract of
19 hire, express or implied, oral or written, including all
20 members of the Illinois National Guard while on active duty in
21 the service of the State, and all probation personnel of the
22 Juvenile Court appointed pursuant to Article VI of the Juvenile
23 Court Act of 1987, and including any official of the State, any
24 county, city, town, township, incorporated village, school
25 district, body politic or municipal corporation therein except
26 any duly appointed member of a police department in any city

1 whose population exceeds 500,000 according to the last Federal
2 or State census, and except any member of a fire insurance
3 patrol maintained by a board of underwriters in this State. A
4 duly appointed member of a fire department in any city, the
5 population of which exceeds 500,000 according to the last
6 federal or State census, is an employee under this Act only
7 with respect to claims brought under paragraph (c) of Section
8 8.

9 One employed by a contractor who has contracted with the
10 State, or a county, city, town, township, incorporated village,
11 school district, body politic or municipal corporation
12 therein, through its representatives, is not considered as an
13 employee of the State, county, city, town, township,
14 incorporated village, school district, body politic or
15 municipal corporation which made the contract.

16 2. Every person in the service of another under any
17 contract of hire, express or implied, oral or written,
18 including persons whose employment is outside of the State of
19 Illinois where the contract of hire is made within the State of
20 Illinois, persons whose employment results in fatal or
21 non-fatal injuries within the State of Illinois where the
22 contract of hire is made outside of the State of Illinois, and
23 persons whose employment is principally localized within the
24 State of Illinois, regardless of the place of the accident or
25 the place where the contract of hire was made, and including
26 aliens, and minors who, for the purpose of this Act are

1 considered the same and have the same power to contract,
2 receive payments and give quittances therefor, as adult
3 employees.

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

6 An employee or his dependents under this Act who shall have
7 a cause of action by reason of any injury, disablement or death
8 arising out of and in the course of his employment may elect to
9 pursue his remedy in the State where injured or disabled, or in
10 the State where the contract of hire is made, or in the State
11 where the employment is principally localized.

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

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

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

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

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

7 Section 60. The Workers' Occupational Diseases Act is
8 amended by changing Section 1 as follows:

9 (820 ILCS 310/1) (from Ch. 48, par. 172.36)

10 Sec. 1. This Act shall be known and may be cited as the
11 "Workers' Occupational Diseases Act".

12 (a) The term "employer" as used in this Act shall be
13 construed to be:

14 1. The State and each county, city, town, township,
15 incorporated village, school district, body politic, or
16 municipal corporation therein.

17 2. Every person, firm, public or private corporation,
18 including hospitals, public service, eleemosynary,
19 religious or charitable corporations or associations, who
20 has any person in service or under any contract for hire,
21 express or implied, oral or written.

22 3. Where an employer operating under and subject to the
23 provisions of this Act loans an employee to another such
24 employer and such loaned employee sustains a compensable

1 occupational disease in the employment of such borrowing
2 employer and where such borrowing employer does not provide
3 or pay the benefits or payments due such employee, such
4 loaning employer shall be liable to provide or pay all
5 benefits or payments due such employee under this Act and
6 as to such employee the liability of such loaning and
7 borrowing employers shall be joint and several, provided
8 that such loaning employer shall in the absence of
9 agreement to the contrary be entitled to receive from such
10 borrowing employer full reimbursement for all sums paid or
11 incurred pursuant to this paragraph together with
12 reasonable attorneys' fees and expenses in any hearings
13 before the Illinois Workers' Compensation Commission or in
14 any action to secure such reimbursement. Where any benefit
15 is provided or paid by such loaning employer, the employee
16 shall have the duty of rendering reasonable co-operation in
17 any hearings, trials or proceedings in the case, including
18 such proceedings for reimbursement.

19 Where an employee files an Application for Adjustment
20 of Claim with the Illinois Workers' Compensation
21 Commission alleging that his or her claim is covered by the
22 provisions of the preceding paragraph, and joining both the
23 alleged loaning and borrowing employers, they and each of
24 them, upon written demand by the employee and within 7 days
25 after receipt of such demand, shall have the duty of filing
26 with the Illinois Workers' Compensation Commission a

1 written admission or denial of the allegation that the
2 claim is covered by the provisions of the preceding
3 paragraph and in default of such filing or if any such
4 denial be ultimately determined not to have been bona fide
5 then the provisions of Paragraph K of Section 19 of this
6 Act shall apply.

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

16 (a-1) The term "employ" as used in this Act has the meaning
17 ascribed to that term in the Fair Labor Standards Act of 1938,
18 29 U.S.C. 203.

19 (b) The term "employee" as used in this Act has the meaning
20 ascribed to that term in the Fair Labor Standards Act of 1938,
21 29 U.S.C. 203, and also includes, shall be construed to mean:

22 1. Every person in the service of the State, county,
23 city, town, township, incorporated village or school
24 district, body politic or municipal corporation therein,
25 whether by election, appointment or contract of hire,
26 express or implied, oral or written, including any official

1 of the State, or of any county, city, town, township,
2 incorporated village, school district, body politic or
3 municipal corporation therein and except any duly
4 appointed member of the fire department in any city whose
5 population exceeds 500,000 according to the last Federal or
6 State census, and except any member of a fire insurance
7 patrol maintained by a board of underwriters in this State.
8 One employed by a contractor who has contracted with the
9 State, or a county, city, town, township, incorporated
10 village, school district, body politic or municipal
11 corporation therein, through its representatives, shall
12 not be considered as an employee of the State, county,
13 city, town, township, incorporated village, school
14 district, body politic or municipal corporation which made
15 the contract.

16 2. Every person in the service of another under any
17 contract of hire, express or implied, oral or written, who
18 contracts an occupational disease while working in the
19 State of Illinois, or who contracts an occupational disease
20 while working outside of the State of Illinois but where
21 the contract of hire is made within the State of Illinois,
22 and any person whose employment is principally localized
23 within the State of Illinois, regardless of the place where
24 the disease was contracted or place where the contract of
25 hire was made, including aliens, and minors who, for the
26 purpose of this Act, except Section 3 hereof, shall be

1 considered the same and have the same power to contract,
2 receive payments and give quittances therefor, as adult
3 employees. An employee or his or her dependents under this
4 Act who shall have a cause of action by reason of an
5 occupational disease, disablement or death arising out of
6 and in the course of his or her employment may elect or
7 pursue his or her remedy in the State where the disease was
8 contracted, or in the State where the contract of hire is
9 made, or in the State where the employment is principally
10 localized.

11 (c) "Commission" means the Illinois Workers' Compensation
12 Commission created by the Workers' Compensation Act, approved
13 July 9, 1951, as amended.

14 (d) In this Act the term "Occupational Disease" means a
15 disease arising out of and in the course of the employment or
16 which has become aggravated and rendered disabling as a result
17 of the exposure of the employment. Such aggravation shall arise
18 out of a risk peculiar to or increased by the employment and
19 not common to the general public.

20 A disease shall be deemed to arise out of the employment if
21 there is apparent to the rational mind, upon consideration of
22 all the circumstances, a causal connection between the
23 conditions under which the work is performed and the
24 occupational disease. The disease need not to have been
25 foreseen or expected but after its contraction it must appear
26 to have had its origin or aggravation in a risk connected with

1 the employment and to have flowed from that source as a
2 rational consequence.

3 An employee shall be conclusively deemed to have been
4 exposed to the hazards of an occupational disease when, for any
5 length of time however short, he or she is employed in an
6 occupation or process in which the hazard of the disease
7 exists; provided however, that in a claim of exposure to atomic
8 radiation, the fact of such exposure must be verified by the
9 records of the central registry of radiation exposure
10 maintained by the Department of Public Health or by some other
11 recognized governmental agency maintaining records of such
12 exposures whenever and to the extent that the records are on
13 file with the Department of Public Health or the agency.

14 Any injury to or disease or death of an employee arising
15 from the administration of a vaccine, including without
16 limitation smallpox vaccine, to prepare for, or as a response
17 to, a threatened or potential bioterrorist incident to the
18 employee as part of a voluntary inoculation program in
19 connection with the person's employment or in connection with
20 any governmental program or recommendation for the inoculation
21 of workers in the employee's occupation, geographical area, or
22 other category that includes the employee is deemed to arise
23 out of and in the course of the employment for all purposes
24 under this Act. This paragraph added by Public Act 93-829 is
25 declarative of existing law and is not a new enactment.

26 The employer liable for the compensation in this Act

1 provided shall be the employer in whose employment the employee
2 was last exposed to the hazard of the occupational disease
3 claimed upon regardless of the length of time of such last
4 exposure, except, in cases of silicosis or asbestosis, the only
5 employer liable shall be the last employer in whose employment
6 the employee was last exposed during a period of 60 days or
7 more after the effective date of this Act, to the hazard of
8 such occupational disease, and, in such cases, an exposure
9 during a period of less than 60 days, after the effective date
10 of this Act, shall not be deemed a last exposure. If a miner
11 who is suffering or suffered from pneumoconiosis was employed
12 for 10 years or more in one or more coal mines there shall,
13 effective July 1, 1973 be a rebuttable presumption that his or
14 her pneumoconiosis arose out of such employment.

15 If a deceased miner was employed for 10 years or more in
16 one or more coal mines and died from a respirable disease there
17 shall, effective July 1, 1973, be a rebuttable presumption that
18 his or her death was due to pneumoconiosis.

19 Any condition or impairment of health of an employee
20 employed as a firefighter, emergency medical technician (EMT),
21 emergency medical technician-intermediate (EMT-I), advanced
22 emergency medical technician (A-EMT), or paramedic which
23 results directly or indirectly from any bloodborne pathogen,
24 lung or respiratory disease or condition, heart or vascular
25 disease or condition, hypertension, tuberculosis, or cancer
26 resulting in any disability (temporary, permanent, total, or

1 partial) to the employee shall be rebuttably presumed to arise
2 out of and in the course of the employee's firefighting, EMT,
3 EMT-I, A-EMT, or paramedic employment and, further, shall be
4 rebuttably presumed to be causally connected to the hazards or
5 exposures of the employment. This presumption shall also apply
6 to any hernia or hearing loss suffered by an employee employed
7 as a firefighter, EMT, EMT-I, A-EMT, or paramedic. However,
8 this presumption shall not apply to any employee who has been
9 employed as a firefighter, EMT, EMT-I, A-EMT, or paramedic for
10 less than 5 years at the time he or she files an Application
11 for Adjustment of Claim concerning this condition or impairment
12 with the Illinois Workers' Compensation Commission. The
13 rebuttable presumption established under this subsection,
14 however, does not apply to an emergency medical technician
15 (EMT), emergency medical technician-intermediate (EMT-I),
16 advanced emergency medical technician (A-EMT), or paramedic
17 employed by a private employer if the employee spends the
18 preponderance of his or her work time for that employer engaged
19 in medical transfers between medical care facilities or
20 non-emergency medical transfers to or from medical care
21 facilities. The changes made to this subsection by this
22 amendatory Act of the 98th General Assembly shall be narrowly
23 construed. The Finding and Decision of the Illinois Workers'
24 Compensation Commission under only the rebuttable presumption
25 provision of this paragraph shall not be admissible or be
26 deemed res judicata in any disability claim under the Illinois

1 Pension Code arising out of the same medical condition;
2 however, this sentence makes no change to the law set forth in
3 Krohe v. City of Bloomington, 204 Ill.2d 392.

4 The insurance carrier liable shall be the carrier whose
5 policy was in effect covering the employer liable on the last
6 day of the exposure rendering such employer liable in
7 accordance with the provisions of this Act.

8 (e) "Disablement" means an impairment or partial
9 impairment, temporary or permanent, in the function of the body
10 or any of the members of the body, or the event of becoming
11 disabled from earning full wages at the work in which the
12 employee was engaged when last exposed to the hazards of the
13 occupational disease by the employer from whom he or she claims
14 compensation, or equal wages in other suitable employment; and
15 "disability" means the state of being so incapacitated.

16 (f) No compensation shall be payable for or on account of
17 any occupational disease unless disablement, as herein
18 defined, occurs within two years after the last day of the last
19 exposure to the hazards of the disease, except in cases of
20 occupational disease caused by berylliosis or by the inhalation
21 of silica dust or asbestos dust and, in such cases, within 3
22 years after the last day of the last exposure to the hazards of
23 such disease and except in the case of occupational disease
24 caused by exposure to radiological materials or equipment, and
25 in such case, within 25 years after the last day of last
26 exposure to the hazards of such disease.

1 (Source: P.A. 98-291, eff. 1-1-14; 98-973, eff. 8-15-14.)

2 Section 65. The Unemployment Insurance Act is amended by
3 changing Sections 211.4 and 212 as follows:

4 (820 ILCS 405/211.4) (from Ch. 48, par. 321.4)

5 Sec. 211.4. A. Notwithstanding any other provision of this
6 Act, the term "employment" shall include service performed
7 after December 31, 1977, by an individual in agricultural labor
8 as defined in Section 214 when:

9 1. Such service is performed for an employing unit
10 which (a) paid cash wages of \$20,000 or more during any
11 calendar quarter in either the current or preceding
12 calendar year to an individual or individuals employed in
13 agricultural labor (not taking into account service in
14 agricultural labor performed before January 1, 1980, by an
15 alien referred to in paragraph 2); or (b) employed in
16 agricultural labor (not taking into account service in
17 agricultural labor performed before January 1, 1980, by an
18 alien referred to in paragraph 2) 10 or more individuals
19 within each of 20 or more calendar weeks (but not
20 necessarily simultaneously and irrespective of whether the
21 same individuals are or were employed in each such week),
22 whether or not such weeks are or were consecutive, within
23 either the current or preceding calendar year.

24 2. Such service is not performed in agricultural labor

1 if performed before January 1, 1980 or on or after the
2 effective date of this amendatory Act of the 96th General
3 Assembly, by an individual who is an alien admitted to the
4 United States to perform service in agricultural labor
5 pursuant to Sections 214(c) and 101(a)(15)(H) of the
6 Immigration and Nationality Act.

7 B. For the purposes of this Section, any individual who is
8 a member of a crew furnished by a crew leader to perform
9 service in agricultural labor for any other employing unit
10 shall be treated as performing service in the employ of such
11 crew leader if (1) the leader holds a valid certificate of
12 registration under the Farm Labor Contractor Registration Act
13 of 1963, or substantially all the members of such crew operate
14 or maintain tractors, mechanized harvesting or crop dusting
15 equipment, or any other mechanized equipment, which is provided
16 by the crew leader; and (2) the service of such individual is
17 not in employment for such other employing unit within the
18 meaning of ~~subsections A and C of~~ Section 212, and of Section
19 213.

20 C. For the purposes of this Section, any individual who is
21 furnished by a crew leader to perform service in agricultural
22 labor for any other employing unit, and who is not treated as
23 performing service in the employ of such crew leader under
24 subsection B, shall be treated as performing service in the
25 employ of such other employing unit, and such employing unit
26 shall be treated as having paid cash wages to such individual

1 in an amount equal to the amount of cash wages paid to the
2 individual by the crew leader (either on his own behalf or on
3 behalf of such other employing unit) for the service in
4 agricultural labor performed for such other employing unit.

5 D. For the purposes of this Section, the term "crew leader"
6 means an individual who (1) furnishes individuals to perform
7 service in agricultural labor for any other employing unit; (2)
8 pays (either on his own behalf or on behalf of such other
9 employing unit) the individuals so furnished by him for the
10 service in agricultural labor performed by them; and (3) has
11 not entered into a written agreement with such other employing
12 unit under which an individual so furnished by him is
13 designated as performing services in the employ of such other
14 employing unit.

15 (Source: P.A. 96-1208, eff. 1-1-11.)

16 (820 ILCS 405/212) (from Ch. 48, par. 322)

17 Sec. 212. The term "employment" does not include services
18 performed by an individual who has been proven in any
19 proceeding where such issue is involved that his or her
20 compensation is not subject to federal wage withholding. This
21 Section shall become operative on January 1 following any year
22 in which the Bond Obligation under the Illinois Unemployment
23 Insurance Trust Fund Financing Act has been reduced to zero.
24 Any Credit Agreement or Revenue Bond issued or refinanced under
25 the Illinois Unemployment Insurance Trust Fund Financing Act

1 after the effective date of this amendatory Act of the 99th
2 General Assembly shall be negotiated as if this Section is
3 currently in effect.

4 ~~Service performed by an individual for an employing unit,~~
5 ~~whether or not such individual employs others in connection~~
6 ~~with the performance of such services, shall be deemed to be~~
7 ~~employment unless and until it is proven in any proceeding~~
8 ~~where such issue is involved that~~

9 ~~A. Such individual has been and will continue to be free~~
10 ~~from control or direction over the performance of such~~
11 ~~services, both under his contract of service and in fact; and~~

12 ~~B. Such service is either outside the usual course of the~~
13 ~~business for which such service is performed or that such~~
14 ~~service is performed outside of all the places of business of~~
15 ~~the enterprise for which such service is performed; and~~

16 ~~C. Such individual is engaged in an independently~~
17 ~~established trade, occupation, profession, or business.~~

18 (Source: Laws 1951, p. 32.)".