

AN ACT concerning employment.

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

Section 5. The Employee Classification Act is amended by changing Sections 5, 25, 30, and 40 and by adding Section 63 as follows:

(820 ILCS 185/5)

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

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

job site.

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

"Contractor" includes a general contractor and a subcontractor.

"Department" means the Department of Labor.

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

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

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

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

"Performing services" means the performance of any constructing, altering, reconstructing, repairing, rehabilitating, refinishing, refurbishing, remodeling, remediating, renovating, custom fabricating, maintenance,

landscaping, improving, wrecking, painting, decorating, demolishing, and adding to or subtracting from any building, structure, highway, roadway, street, bridge, alley, sewer, ditch, sewage disposal plant, water works, parking facility, railroad, excavation or other structure, project, development, real property or improvement, or to do any part thereof, whether or not the performance of the work herein described involves the addition to, or fabrication into, any structure, project, development, real property or improvement herein described of any material or article of merchandise. Construction shall also include moving construction related materials on the job site to or from the job site.

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

(820 ILCS 185/25)

Sec. 25. Enforcement.

(a) Any interested party may file a complaint with the Department against an entity or employer covered under this Act if there is a reasonable belief that the entity or employer is in violation of this Act. It shall be the duty of the Department to enforce the provisions of this Act. The Department shall have the power to conduct investigations in connection with the administration and enforcement of this Act and any investigator with the Department shall be authorized to visit and inspect, at all reasonable times, any places covered by this Act and shall be authorized to inspect, at all

reasonable times, documents related to the determination of whether an individual is an employee under Section 10 of this Act. The Director of Labor or his or her representative may compel, by subpoena, the attendance and testimony of witnesses and the production of books, payrolls, records, papers, and other evidence in any investigation and may administer oaths to witnesses. Within 120 days of the filing of a complaint, the Department shall notify the employer in writing of the filing of a complaint and provide the employer the location and approximate date of the project or projects, affected contractors, and the nature of the allegations being investigated.

(b) Whenever the Department believes upon investigation that there has been a violation of any of the provisions of this Act or any rules or regulations promulgated under this Act, the Department may: (i) issue and cause to be served on any party an order to cease and desist from further violation of the Act, (ii) take affirmative or other action as deemed reasonable to eliminate the effect of the violation, (iii) collect the amount of any wages, salary, employment benefits, or other compensation denied or lost to the individual, and (iv) assess any civil penalty allowed by this Act. ~~The civil penalties assessed by the Department as well as any other relief requested by the Department shall be recoverable in an action brought in the name of the people of the State of Illinois by the Attorney General.~~

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

(d) The employer has 28 calendar days from the date of the Department's findings to answer the allegations contained in the Department's findings. If an employer fails to answer all allegations contained in the Department's findings, any unanswered allegations or findings shall be deemed admitted to be true and shall be found true in the final decision issued by the Administrative Law Judge. If, within 30 calendar days of the final decision issued by the Administrative Law Judge, the employer files a motion to vacate the Administrative Law Judge's final decision and demonstrates good cause for failing to answer the Department's allegations, and the Administrative Law Judge grants the motion, the employer shall be afforded an opportunity to answer and the matter shall proceed as if an original answer to the Department's findings had been filed.

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

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

(820 ILCS 185/30)

Sec. 30. Attorney General; State's Attorneys. Criminal violations of this Act shall be prosecuted by the Attorney General or the appropriate State's Attorney. The Department shall refer matters to the Attorney General and the appropriate State's Attorney upon determining that a criminal violation may have occurred. ~~In all other proceedings the Department shall be represented by the Attorney General's Office.~~

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

(820 ILCS 185/40)

Sec. 40. Penalties.

(a) An employer or entity that violates any of the provisions of this Act or any rule adopted under this Act shall be subject to a civil penalty not to exceed \$1,000 ~~\$1,500~~ for each violation found in the first audit by the Department. Following a first audit, an employer or entity shall be subject to a civil penalty not to exceed \$2,000 ~~\$2,500~~ for each repeat violation found by the Department within a 5 year period. For purposes of this Section, each violation of this Act for each person and for each day the violation continues shall constitute a separate and distinct violation. In determining the amount of a penalty, the Director shall consider the appropriateness of the penalty to the employer or entity

charged, upon the determination of the gravity of the violations.

(b) The amount of the penalty, when finally determined, may be recovered in any administrative proceeding or a civil action filed in any circuit court by the Director of Labor, or a person aggrieved by a violation of this Act or any rule adopted under this Act.

(1) The Department shall distribute to all affected employees 10% of the civil penalty recovered as a result of any administrative proceeding or civil action brought by the Department. The remaining 90% of the amount recovered shall be submitted to the Director of Labor.

(2) In any civil action brought by an interested party pursuant to this Section, the circuit court shall award the interested party 10% of the amount recovered. In such case, the remaining amount recovered shall be submitted to the Director of Labor.

(c) Any uncollected amount shall be subject to the provisions of the Illinois State Collection Act of 1986.

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

(820 ILCS 185/63 new)

Sec. 63. Individual liability. In addition to an individual who is an employer pursuant to Section 5 of this Act, any officer of a corporation or agent of a corporation who knowingly permits such employer to violate the provisions of

this Act may be held individually liable for all violations and penalties assessed under this Act. This Section shall not apply to an individual who is an officer or agent of a corporation which on the project under investigation satisfies the responsible bidder requirements set forth in the Illinois Procurement Code.