

SB0002



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

SB0002

Introduced 1/11/2017, by Sen. Kimberly A. Lightford

SYNOPSIS AS INTRODUCED:

35 ILCS 5/704A
820 ILCS 105/4

from Ch. 48, par. 1004

Amends the Minimum Wage Law. Increases the minimum wage from \$8.25 to \$9.00 beginning July 1, 2017 and increases it by \$0.50 each July 1 until July 1, 2021, at which point the minimum wage will be \$11.00. Preempts home rule powers, except that the limitation on home rule powers does not apply to specified ordinances adopted by the City Council of City of Chicago or the Cook County Board of Commissioners. Amends the Illinois Income Tax Act. Creates a credit against the withholding tax liability of employers with fewer than 50 employees, calculated based on the increase in the minimum wage. Effective immediately, but this Act does not take effect at all unless Senate Bills 1, 3, 4, 5, 7, 8, 9, 10, 11, 12, and 13 of the 100th General Assembly become law.

LRB100 06271 HLH 16308 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 Illinois Income Tax Act is amended by
5 changing Section 704A as follows:

6 (35 ILCS 5/704A)

7 Sec. 704A. Employer's return and payment of tax withheld.

8 (a) In general, every employer who deducts and withholds or
9 is required to deduct and withhold tax under this Act on or
10 after January 1, 2008 shall make those payments and returns as
11 provided in this Section.

12 (b) Returns. Every employer shall, in the form and manner
13 required by the Department, make returns with respect to taxes
14 withheld or required to be withheld under this Article 7 for
15 each quarter beginning on or after January 1, 2008, on or
16 before the last day of the first month following the close of
17 that quarter.

18 (c) Payments. With respect to amounts withheld or required
19 to be withheld on or after January 1, 2008:

20 (1) Semi-weekly payments. For each calendar year, each
21 employer who withheld or was required to withhold more than
22 \$12,000 during the one-year period ending on June 30 of the
23 immediately preceding calendar year, payment must be made:

1 (A) on or before each Friday of the calendar year,
2 for taxes withheld or required to be withheld on the
3 immediately preceding Saturday, Sunday, Monday, or
4 Tuesday;

5 (B) on or before each Wednesday of the calendar
6 year, for taxes withheld or required to be withheld on
7 the immediately preceding Wednesday, Thursday, or
8 Friday.

9 Beginning with calendar year 2011, payments made under
10 this paragraph (1) of subsection (c) must be made by
11 electronic funds transfer.

12 (2) Semi-weekly payments. Any employer who withholds
13 or is required to withhold more than \$12,000 in any quarter
14 of a calendar year is required to make payments on the
15 dates set forth under item (1) of this subsection (c) for
16 each remaining quarter of that calendar year and for the
17 subsequent calendar year.

18 (3) Monthly payments. Each employer, other than an
19 employer described in items (1) or (2) of this subsection,
20 shall pay to the Department, on or before the 15th day of
21 each month the taxes withheld or required to be withheld
22 during the immediately preceding month.

23 (4) Payments with returns. Each employer shall pay to
24 the Department, on or before the due date for each return
25 required to be filed under this Section, any tax withheld
26 or required to be withheld during the period for which the

1 return is due and not previously paid to the Department.

2 (d) Regulatory authority. The Department may, by rule:

3 (1) Permit employers, in lieu of the requirements of
4 subsections (b) and (c), to file annual returns due on or
5 before January 31 of the year for taxes withheld or
6 required to be withheld during the previous calendar year
7 and, if the aggregate amounts required to be withheld by
8 the employer under this Article 7 (other than amounts
9 required to be withheld under Section 709.5) do not exceed
10 \$1,000 for the previous calendar year, to pay the taxes
11 required to be shown on each such return no later than the
12 due date for such return.

13 (2) Provide that any payment required to be made under
14 subsection (c) (1) or (c) (2) is deemed to be timely to the
15 extent paid by electronic funds transfer on or before the
16 due date for deposit of federal income taxes withheld from,
17 or federal employment taxes due with respect to, the wages
18 from which the Illinois taxes were withheld.

19 (3) Designate one or more depositories to which payment
20 of taxes required to be withheld under this Article 7 must
21 be paid by some or all employers.

22 (4) Increase the threshold dollar amounts at which
23 employers are required to make semi-weekly payments under
24 subsection (c) (1) or (c) (2).

25 (e) Annual return and payment. Every employer who deducts
26 and withholds or is required to deduct and withhold tax from a

1 person engaged in domestic service employment, as that term is
2 defined in Section 3510 of the Internal Revenue Code, may
3 comply with the requirements of this Section with respect to
4 such employees by filing an annual return and paying the taxes
5 required to be deducted and withheld on or before the 15th day
6 of the fourth month following the close of the employer's
7 taxable year. The Department may allow the employer's return to
8 be submitted with the employer's individual income tax return
9 or to be submitted with a return due from the employer under
10 Section 1400.2 of the Unemployment Insurance Act.

11 (f) Magnetic media and electronic filing. Any W-2 Form
12 that, under the Internal Revenue Code and regulations
13 promulgated thereunder, is required to be submitted to the
14 Internal Revenue Service on magnetic media or electronically
15 must also be submitted to the Department on magnetic media or
16 electronically for Illinois purposes, if required by the
17 Department.

18 (g) For amounts deducted or withheld after December 31,
19 2009, a taxpayer who makes an election under subsection (f) of
20 Section 5-15 of the Economic Development for a Growing Economy
21 Tax Credit Act for a taxable year shall be allowed a credit
22 against payments due under this Section for amounts withheld
23 during the first calendar year beginning after the end of that
24 taxable year equal to the amount of the credit for the
25 incremental income tax attributable to full-time employees of
26 the taxpayer awarded to the taxpayer by the Department of

1 Commerce and Economic Opportunity under the Economic
2 Development for a Growing Economy Tax Credit Act for the
3 taxable year and credits not previously claimed and allowed to
4 be carried forward under Section 211(4) of this Act as provided
5 in subsection (f) of Section 5-15 of the Economic Development
6 for a Growing Economy Tax Credit Act. The credit or credits may
7 not reduce the taxpayer's obligation for any payment due under
8 this Section to less than zero. If the amount of the credit or
9 credits exceeds the total payments due under this Section with
10 respect to amounts withheld during the calendar year, the
11 excess may be carried forward and applied against the
12 taxpayer's liability under this Section in the succeeding
13 calendar years as allowed to be carried forward under paragraph
14 (4) of Section 211 of this Act. The credit or credits shall be
15 applied to the earliest year for which there is a tax
16 liability. If there are credits from more than one taxable year
17 that are available to offset a liability, the earlier credit
18 shall be applied first. Each employer who deducts and withholds
19 or is required to deduct and withhold tax under this Act and
20 who retains income tax withholdings under subsection (f) of
21 Section 5-15 of the Economic Development for a Growing Economy
22 Tax Credit Act must make a return with respect to such taxes
23 and retained amounts in the form and manner that the
24 Department, by rule, requires and pay to the Department or to a
25 depository designated by the Department those withheld taxes
26 not retained by the taxpayer. For purposes of this subsection

1 (g), the term taxpayer shall include taxpayer and members of
2 the taxpayer's unitary business group as defined under
3 paragraph (27) of subsection (a) of Section 1501 of this Act.
4 This Section is exempt from the provisions of Section 250 of
5 this Act.

6 (h) An employer may claim a credit against payments due
7 under this Section for amounts withheld during the first
8 calendar year ending after the date on which a tax credit
9 certificate was issued under Section 35 of the Small Business
10 Job Creation Tax Credit Act. The credit shall be equal to the
11 amount shown on the certificate, but may not reduce the
12 taxpayer's obligation for any payment due under this Section to
13 less than zero. If the amount of the credit exceeds the total
14 payments due under this Section with respect to amounts
15 withheld during the calendar year, the excess may be carried
16 forward and applied against the taxpayer's liability under this
17 Section in the 5 succeeding calendar years. The credit shall be
18 applied to the earliest year for which there is a tax
19 liability. If there are credits from more than one calendar
20 year that are available to offset a liability, the earlier
21 credit shall be applied first. This Section is exempt from the
22 provisions of Section 250 of this Act.

23 (i) Each employer that does not employ more than 50
24 employees at any time during the applicable payment period may
25 claim a credit against payments due under this Section for
26 reporting periods that begin on or after July 1, 2017 and end

1 on or before June 30, 2020, for each qualified employee, in an
2 amount equal to: (1) the maximum credit, minus (2) the
3 difference between the average wage paid to the qualified
4 employee by the employer during the reporting period and the
5 minimum wage in effect for that category of employee in the
6 jurisdiction where the employee is employed, multiplied by (3)
7 the number of hours the employee worked during the reporting
8 period.

9 For the purposes of this subsection (i):

10 (1) "Category of employee" means:

11 (A) employees who are under 18 years of age;

12 (B) employees who are 18 years of age or older, but
13 who qualify for a reduced minimum wage as provided
14 under paragraph (2) of subsection (a) of Section 4 of
15 the Minimum Wage Law;

16 (C) employees who are engaged in an occupation in
17 which gratuities have customarily and usually
18 constituted, and have been recognized as part of, the
19 remuneration for hire purposes, as provided in
20 subsection (c) of Section 4 of the Minimum Wage Law;

21 (D) employees who are 18 years of age or older, but
22 who qualify for a reduced minimum wage under Section 5
23 of the Minimum Wage Law;

24 (E) employees who are 18 years of age or older, but
25 who qualify for a reduced minimum wage under Section 6
26 of the Minimum Wage Law; and

1 (F) employees who are 18 years of age or older and
2 do not qualify under paragraph (B), (C), (D), or (E) of
3 this item (1).

4 (2) "Employer" and "employee" have the meanings
5 ascribed to those terms in the Minimum Wage Law, except
6 that "employee" also includes employees who work for an
7 employer employing fewer than 4 employees.

8 (3) "Maximum credit" means: (A) \$0.45 per hour for
9 qualified employees for whom the employer receives an
10 allowance for gratuities under subsection (c) of Section 4
11 of the Minimum Wage Law; (B) \$0.53 per hour for employees
12 who receive a reduced minimum wage under Section 6 of the
13 Minimum Wage Law; and (C) \$0.75 per hour for all other
14 qualified employees.

15 (4) "Qualified employee" means an employee making no
16 more than \$0.75 per hour more than the minimum wage for
17 that category of employee, except that: (A) in the case of
18 employees who are engaged in an occupation in which
19 gratuities have customarily and usually constituted, and
20 have been recognized as part of, the remuneration for hire
21 purposes, as provided in subsection (c) of Section 4 of the
22 Minimum Wage Law, "qualified employee" means an employee
23 making no more than \$0.45 per hour more than the minimum
24 wage for that category of employee; and (B) for employees
25 who qualify for a reduced minimum wage under Section 6 of
26 the Minimum Wage Law, "qualified employee" means an

1 employee making no more than \$0.53 per hour more than the
2 minimum wage for that category of employee.

3 (Source: P.A. 96-834, eff. 12-14-09; 96-888, eff. 4-13-10;
4 96-905, eff. 6-4-10; 96-1027, eff. 7-12-10; 97-333, eff.
5 8-12-11; 97-507, eff. 8-23-11.)

6 Section 10. The Minimum Wage Law is amended by changing
7 Section 4 as follows:

8 (820 ILCS 105/4) (from Ch. 48, par. 1004)

9 Sec. 4. (a)(1) Every employer shall pay to each of his
10 employees in every occupation wages of not less than \$2.30 per
11 hour or in the case of employees under 18 years of age wages of
12 not less than \$1.95 per hour, except as provided in Sections 5
13 and 6 of this Act, and on and after January 1, 1984, every
14 employer shall pay to each of his employees in every occupation
15 wages of not less than \$2.65 per hour or in the case of
16 employees under 18 years of age wages of not less than \$2.25
17 per hour, and on and after October 1, 1984 every employer shall
18 pay to each of his employees in every occupation wages of not
19 less than \$3.00 per hour or in the case of employees under 18
20 years of age wages of not less than \$2.55 per hour, and on or
21 after July 1, 1985 every employer shall pay to each of his
22 employees in every occupation wages of not less than \$3.35 per
23 hour or in the case of employees under 18 years of age wages of
24 not less than \$2.85 per hour, and from January 1, 2004 through

1 December 31, 2004 every employer shall pay to each of his or
2 her employees who is 18 years of age or older in every
3 occupation wages of not less than \$5.50 per hour, and from
4 January 1, 2005 through June 30, 2007 every employer shall pay
5 to each of his or her employees who is 18 years of age or older
6 in every occupation wages of not less than \$6.50 per hour, and
7 from July 1, 2007 through June 30, 2008 every employer shall
8 pay to each of his or her employees who is 18 years of age or
9 older in every occupation wages of not less than \$7.50 per
10 hour, and from July 1, 2008 through June 30, 2009 every
11 employer shall pay to each of his or her employees who is 18
12 years of age or older in every occupation wages of not less
13 than \$7.75 per hour, and from July 1, 2009 through June 30,
14 2010 every employer shall pay to each of his or her employees
15 who is 18 years of age or older in every occupation wages of
16 not less than \$8.00 per hour, and from ~~on and after~~ July 1,
17 2010 through June 30, 2017 every employer shall pay to each of
18 his or her employees who is 18 years of age or older in every
19 occupation wages of not less than \$8.25 per hour, and from July
20 1, 2017 to June 30, 2018 every employer shall pay to each of
21 his or her employees who is 18 years of age or older in every
22 occupation wages of not less than \$9.00 per hour, and from July
23 1, 2018 to June 30, 2019 every employer shall pay to each of
24 his or her employees who is 18 years of age or older in every
25 occupation wages of not less than \$9.50 per hour, and from July
26 1, 2019 to June 30, 2020 every employer shall pay to each of

1 his or her employees who is 18 years of age or older in every
2 occupation wages of not less than \$10.00 per hour, and from
3 July 1, 2020 to June 30, 2021 every employer shall pay to each
4 of his or her employees who is 18 years of age or older in every
5 occupation wages of not less than \$10.50 per hour, and on and
6 after July 1, 2021 every employer shall pay to each of his or
7 her employees who is 18 years of age or older in every
8 occupation wages of not less than \$11.00 per hour.

9 (2) Unless an employee's wages are reduced under Section 6,
10 then in lieu of the rate prescribed in item (1) of this
11 subsection (a), an employer may pay an employee who is 18 years
12 of age or older, during the first 90 consecutive calendar days
13 after the employee is initially employed by the employer, a
14 wage that is not more than 50¢ less than the wage prescribed in
15 item (1) of this subsection (a); however, an employer shall pay
16 not less than the rate prescribed in item (1) of this
17 subsection (a) to:

18 (A) a day or temporary laborer, as defined in Section 5
19 of the Day and Temporary Labor Services Act, who is 18
20 years of age or older; and

21 (B) an employee who is 18 years of age or older and
22 whose employment is occasional or irregular and requires
23 not more than 90 days to complete.

24 (3) At no time shall the wages paid to any employee under
25 18 years of age be more than 50¢ less than the wage required to
26 be paid to employees who are at least 18 years of age under

1 item (1) of this subsection (a).

2 (b) No employer shall discriminate between employees on the
3 basis of sex or mental or physical disability, except as
4 otherwise provided in this Act by paying wages to employees at
5 a rate less than the rate at which he pays wages to employees
6 for the same or substantially similar work on jobs the
7 performance of which requires equal skill, effort, and
8 responsibility, and which are performed under similar working
9 conditions, except where such payment is made pursuant to (1) a
10 seniority system; (2) a merit system; (3) a system which
11 measures earnings by quantity or quality of production; or (4)
12 a differential based on any other factor other than sex or
13 mental or physical disability, except as otherwise provided in
14 this Act.

15 (c) Every employer of an employee engaged in an occupation
16 in which gratuities have customarily and usually constituted
17 and have been recognized as part of the remuneration for hire
18 purposes is entitled to an allowance for gratuities as part of
19 the hourly wage rate provided in Section 4, subsection (a) in
20 an amount not to exceed 40% of the applicable minimum wage
21 rate. The Director shall require each employer desiring an
22 allowance for gratuities to provide substantial evidence that
23 the amount claimed, which may not exceed 40% of the applicable
24 minimum wage rate, was received by the employee in the period
25 for which the claim of exemption is made, and no part thereof
26 was returned to the employer.

1 (d) No camp counselor who resides on the premises of a
2 seasonal camp of an organized not-for-profit corporation shall
3 be subject to the adult minimum wage if the camp counselor (1)
4 works 40 or more hours per week, and (2) receives a total
5 weekly salary of not less than the adult minimum wage for a
6 40-hour week. If the counselor works less than 40 hours per
7 week, the counselor shall be paid the minimum hourly wage for
8 each hour worked. Every employer of a camp counselor under this
9 subsection is entitled to an allowance for meals and lodging as
10 part of the hourly wage rate provided in Section 4, subsection
11 (a), in an amount not to exceed 25% of the minimum wage rate.

12 (e) A camp counselor employed at a day camp is not subject
13 to the adult minimum wage if the camp counselor is paid a
14 stipend on a onetime or periodic basis and, if the camp
15 counselor is a minor, the minor's parent, guardian or other
16 custodian has consented in writing to the terms of payment
17 before the commencement of such employment.

18 (f) Preemption of home rule powers.

19 (1) The establishment of a minimum wage that employers
20 must pay their employees is an exclusive power and function
21 of the State. Except as provided in paragraph (2) of this
22 subsection (f), a home rule unit may not regulate or
23 establish a minimum wage. This subsection (f) is a denial
24 and limitation of the home rule powers and functions under
25 subsection (h) of Section 6 of Article VII of the Illinois
26 Constitution.

1 (2) Paragraph (1) of this subsection (f) shall not
2 apply to Ordinance No. 02014-9680 adopted by the City
3 Council of the City of Chicago on December 2, 2014,
4 provided that: (i) the provisions set forth in that
5 ordinance are not changed by the City Council of the City
6 of Chicago after December 2, 2014; (ii) the minimum wage
7 required to be paid to employees subject to Section
8 1-24-020 of that ordinance beginning July 1, 2019, and each
9 year thereafter, is no greater than \$13.00 per hour; and
10 (iii) the minimum wage required to be paid employees
11 subject to that ordinance in occupations receiving
12 gratuities beginning July 1, 2019, and each year
13 thereafter, is no greater than the amount calculated by the
14 Commissioner of Business Affairs and Consumer Protection
15 of the City of Chicago by June 1, 2018 pursuant to
16 paragraph (3) of subsection (a) of Section 1-24-030 of that
17 ordinance. This paragraph (2) of this subsection (f) is a
18 limitation under subsection (i) of Section 6 of Article VII
19 of the Illinois Constitution.

20 (3) Paragraph (1) of this subsection (f) shall not
21 apply to Ordinance No. 16-5768, adopted by the Cook County
22 Board of Commissioners on October 26, 2016, provided that:
23 (i) the provisions set forth in the ordinance are not
24 changed by the Cook County Board of Commissioners after
25 October 26, 2016; (ii) the minimum wage paid to employees
26 subject to Section 42-9 of that ordinance beginning July 1,

1 2020, and each year thereafter, is no greater than \$13.00
2 per hour; and (iii) the minimum wage required to be paid
3 employees in occupations receiving gratuities, subject to
4 Section 42-10 of that ordinance, beginning on July 1, 2020,
5 and each year thereafter, is no greater than the amount
6 calculated on or before June 1, 2020, pursuant to paragraph
7 (2) of subsection (b) of Section 42-10 of that ordinance.
8 This paragraph (3) of this subsection (f) is a limitation
9 under subsection (i) of Section 6 of Article VII of the
10 Illinois Constitution.

11 (Source: P.A. 99-143, eff. 7-27-15.)

12 Section 99. Effective date. This Act takes effect upon
13 becoming law, but this Act does not take effect at all unless
14 Senate Bills 1, 3, 4, 5, 7, 8, 9, 10, 11, 12, and 13 of the
15 100th General Assembly become law.