



## 104TH GENERAL ASSEMBLY

### State of Illinois

2025 and 2026

HB2794

Introduced 2/6/2025, by Rep. Edgar González, Jr.

#### SYNOPSIS AS INTRODUCED:

820 ILCS 185/5  
820 ILCS 185/10  
820 ILCS 185/20  
820 ILCS 185/25  
820 ILCS 185/35  
820 ILCS 185/40  
820 ILCS 185/42  
820 ILCS 185/45  
820 ILCS 185/55  
820 ILCS 185/60  
820 ILCS 185/63

Amends the Employee Classification Act. Provides that a developer, general contractor, and subcontractor are jointly and severally liable for any subcontractor's failure to properly classify persons performing services as employees unless specified conditions are satisfied. Provides that it is a violation for a developer or a general contractor to utilize a subcontractor at any tier who commits a violation of the Act unless specified conditions are satisfied. Makes conforming and other changes. Defines terms.

LRB104 06369 SPS 16405 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 Employee Classification Act is amended by  
5 changing Sections 5, 10, 20, 25, 35, 40, 42, 45, 55, 60, 63,  
6 and 990 as follows:

7 (820 ILCS 185/5)

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

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

1 job site.

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

7 "Contractor" includes a general contractor and a  
8 subcontractor.

9 "Department" means the Department of Labor.

10 "Developer" means any person that enters into a contract  
11 with a contractor providing for the construction or renovation  
12 of a structure for commercial purposes.

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

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

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

24 "Interested party" means a person with an interest in  
25 compliance with this Act and includes, without limitation, any  
26 labor union, worker center, or employee association that

1 represents employees in the industry where the  
2 misclassification has occurred.

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

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

20 (820 ILCS 185/10)

21 Sec. 10. Applicability; status of individuals performing  
22 service.

23 (a) For the purposes of this Act, an individual performing  
24 services for a contractor is deemed to be an employee of the  
25 employer except as provided in subsections (b) and (c) of this

1 Section.

2 (b) An individual performing services for a contractor is  
3 deemed to be an employee of the contractor unless it is shown  
4 that:

5 (1) the individual has been and will continue to be  
6 free from control or direction over the performance of the  
7 service for the contractor, both under the individual's  
8 contract of service and in fact;

9 (2) the service performed by the individual is outside  
10 the usual course of services performed by the contractor;  
11 and

12 (3) the individual is engaged in an independently  
13 established trade, occupation, profession or business; or

14 (4) the individual is deemed a legitimate sole  
15 proprietor or partnership under subsection (c) of this  
16 Section.

17 (c) The sole proprietor or partnership performing services  
18 for a contractor as a subcontractor is deemed legitimate if it  
19 is shown that:

20 (1) the sole proprietor or partnership is performing  
21 the service free from the direction or control over the  
22 means and manner of providing the service, subject only to  
23 the right of the contractor for whom the service is  
24 provided to specify the desired result;

25 (2) the sole proprietor or partnership is not subject  
26 to cancellation or destruction upon severance of the

1 relationship with the contractor;

2 (3) the sole proprietor or partnership has a  
3 substantial investment of capital in the sole  
4 proprietorship or partnership beyond ordinary tools and  
5 equipment and a personal vehicle;

6 (4) the sole proprietor or partnership owns the  
7 capital goods and gains the profits and bears the losses  
8 of the sole proprietorship or partnership;

9 (5) the sole proprietor or partnership makes its  
10 services available to the general public or the business  
11 community on a continuing basis;

12 (6) the sole proprietor or partnership includes  
13 services rendered on a Federal Income Tax Schedule as an  
14 independent business or profession;

15 (7) the sole proprietor or partnership performs  
16 services for the contractor under the sole  
17 proprietorship's or partnership's name;

18 (8) when the services being provided require a license  
19 or permit, the sole proprietor or partnership obtains and  
20 pays for the license or permit in the sole  
21 proprietorship's or partnership's name;

22 (9) the sole proprietor or partnership furnishes the  
23 tools and equipment necessary to provide the service;

24 (10) if necessary, the sole proprietor or partnership  
25 hires its own employees without contractor approval, pays  
26 the employees without reimbursement from the contractor

1 and reports the employees' income to the Internal Revenue  
2 Service;

3 (11) the contractor does not represent the sole  
4 proprietorship or partnership as an employee of the  
5 contractor to its customers; and

6 (12) the sole proprietor or partnership has the right  
7 to perform similar services for others on whatever basis  
8 and whenever it chooses.

9 (d) Where a sole proprietor or partnership performing  
10 services for a contractor as a subcontractor is deemed not  
11 legitimate under subsection (c) of this Section, the sole  
12 proprietorship or partnership shall be deemed an individual  
13 for purposes of this Act.

14 (e) Contractors, subcontractors, ~~Subcontractors or~~ lower  
15 tiered contractors at any level, and developers are subject to  
16 all provisions of this Act.

17 (f) A contractor shall not be liable under this Act for any  
18 subcontractor's failure to properly classify persons  
19 performing services as employees, nor shall a subcontractor be  
20 liable for any lower tiered subcontractor's failure to  
21 properly classify persons performing services as employees.

22 (g) The developer, general contractor, and subcontractor  
23 are jointly and severally liable under this Act for any  
24 subcontractor's failure to properly classify persons  
25 performing services as employees, except that:

26 (1) the developer is not liable if the developer

1 demonstrates that the developer was not aware of the  
2 misclassification and could not have been aware of the  
3 misclassification through the exercise of reasonable  
4 diligence and that the developer took all reasonable steps  
5 to prevent any misclassification on the job or project;  
6 and

7 (2) the general contractor is not liable if the  
8 general contractor demonstrates that the general  
9 contractor was not aware of the misclassification and  
10 could not have been aware of the misclassification through  
11 the exercise of reasonable diligence and that the general  
12 contractor took all reasonable steps to prevent any  
13 misclassification on the job or project.

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

15 (820 ILCS 185/20)

16 Sec. 20. Failure to properly designate or classify  
17 individuals performing services as employees.

18 (a) It is a violation of this Act for an employer or entity  
19 not to designate an individual as an employee under Section 10  
20 of this Act unless the employer or entity satisfies the  
21 provisions of Section 10 of this Act.

22 (b) It is a violation of this Act for a developer or a  
23 general contractor to utilize a subcontractor at any tier who  
24 commits a violation described in subsection (a), except that:

25 (1) the developer is not deemed to have committed a

1 violation if the developer demonstrates that the developer  
2 was not aware of the misclassification and could not have  
3 been aware of the misclassification through the exercise  
4 of reasonable diligence and that the developer took all  
5 reasonable steps to prevent any misclassification on the  
6 job or project; and

7 (2) the general contractor is not deemed to have  
8 committed a violation if the developer demonstrates that  
9 the developer was not aware of the misclassification and  
10 could not have been aware of the misclassification through  
11 the exercise of reasonable diligence and that the general  
12 contractor took all reasonable steps to prevent any  
13 misclassification on the job or project.

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

15 (820 ILCS 185/25)

16 Sec. 25. Enforcement.

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

1 covered by this Act and shall be authorized to inspect, at all  
2 reasonable times, documents related to the determination of  
3 whether an individual is an employee under Section 10 of this  
4 Act. The Director of Labor or his or her representative may  
5 compel, by subpoena, the attendance and testimony of witnesses  
6 and the production of books, payrolls, records, papers, and  
7 other evidence in any investigation and may administer oaths  
8 to witnesses. Within 120 days of the filing of a complaint, the  
9 Department shall notify the employer in writing of the filing  
10 of a complaint and provide the employer the location and  
11 approximate date of the project or projects, affected  
12 contractors, and the nature of the allegations being  
13 investigated.

14 (b) Whenever the Department believes upon investigation  
15 that there has been a violation of any of the provisions of  
16 this Act or any rules or regulations promulgated under this  
17 Act, the Department may: (i) issue and cause to be served on  
18 any party an order to cease and desist from further violation  
19 of the Act, (ii) take affirmative or other action as deemed  
20 reasonable to eliminate the effect of the violation, (iii)  
21 collect the amount of any wages, salary, employment benefits,  
22 or other compensation denied or lost to the individual, and  
23 (iv) assess any civil penalty allowed by this Act.

24 (c) If, upon investigation, the Department finds cause to  
25 believe that Section 20 or Section 55 of this Act has been  
26 violated, the Department shall notify the developer,

1 contractor, including general contractor, employer, or entity,  
2 in writing, of its finding and any proposed relief due and  
3 penalties assessed and that the matter will be referred to an  
4 Administrative Law Judge to schedule a formal hearing in  
5 accordance with the Illinois Administrative Procedure Act.

6 (d) The developer, contractor, including general  
7 contractor, employer, or entity has 28 calendar days from the  
8 date of the Department's findings to answer the allegations  
9 contained in the Department's findings. If an employer fails  
10 to answer all allegations contained in the Department's  
11 findings, any unanswered allegations or findings shall be  
12 deemed admitted to be true and shall be found true in the final  
13 decision issued by the Administrative Law Judge. If, within 30  
14 calendar days of the final decision issued by the  
15 Administrative Law Judge, the employer files a motion to  
16 vacate the Administrative Law Judge's final decision and  
17 demonstrates good cause for failing to answer the Department's  
18 allegations, and the Administrative Law Judge grants the  
19 motion, the employer shall be afforded an opportunity to  
20 answer and the matter shall proceed as if an original answer to  
21 the Department's findings had been filed.

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

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

2 (820 ILCS 185/35)

3 Sec. 35. Contempt. Whenever it appears that any developer,  
4 contractor, including general contractor, employer, or entity  
5 has violated a valid order of the Department issued under this  
6 Act, the Director of Labor may commence an action and obtain  
7 from the court an order commanding the employer or entity to  
8 obey the order of the Department or be adjudged guilty of  
9 contempt of court and punished accordingly.

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

11 (820 ILCS 185/40)

12 Sec. 40. Penalties.

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

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

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

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

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

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

20 (d) This Section applies to subcontractors, general  
21 contractors, and developers.

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

23 (820 ILCS 185/42)

24 Sec. 42. Debarments. For any second or subsequent  
25 violation determined by the Department which is within 5 years

1 of an earlier violation, the Department shall add the employer  
2 or entity's name to a list to be posted on the Department's  
3 official website. Upon such notice, the Department shall  
4 notify the violating employer or entity. No state contract  
5 shall be awarded to an employer or entity appearing on the list  
6 until 4 years have elapsed from the date of the last violation.  
7 This Section applies to subcontractors, general contractors,  
8 and developers.

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

10 (820 ILCS 185/45)

11 Sec. 45. Willful violations.

12 (a) Whoever willfully violates any of the provisions of  
13 this Act or any rule adopted under this Act or whoever  
14 obstructs the Director of Labor, or his or her  
15 representatives, or any other person authorized to inspect  
16 places of employment under this Act shall be liable for  
17 penalties up to double the statutory amount.

18 (b) Whoever willfully violates any of the provisions of  
19 this Act or any rule adopted under this Act shall be liable to  
20 the employee for punitive damages in an amount equal to the  
21 penalties assessed in subsection (a) of this Section.

22 (c) The penalty shall be imposed in cases in which an  
23 employer or entity's conduct is proven by a preponderance of  
24 the evidence to be willful. The penalty may be recovered in a  
25 civil action brought by the Director of Labor in any circuit

1 court. In any such action, the Director of Labor shall be  
2 represented by the Attorney General. Any uncollected amount  
3 shall be subject to the provisions of the Illinois State  
4 Collection Act of 1986.

5 (d) Any developer, contractor, including general  
6 contractor, ~~An~~ entity, or employer that willfully violates any  
7 provision of this Act or any rule adopted under this Act  
8 commits a Class C misdemeanor. Any developer, contractor,  
9 including general contractor, ~~An~~ entity, or employer that  
10 commits a second or subsequent violation within a 5 year  
11 period commits a Class 4 felony.

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

13 (820 ILCS 185/55)

14 Sec. 55. Retaliation.

15 (a) It is a violation of this Act for a developer,  
16 contractor, including general contractor, ~~an~~ employer, or  
17 entity, or any agent of a developer, contractor, including  
18 general contractor, ~~an~~ employer, or entity, to retaliate  
19 through discharge or in any other manner against any person  
20 for exercising any rights granted under this Act. Such  
21 retaliation shall subject a developer, contractor, including  
22 general contractor, ~~an~~ employer, or entity to civil penalties  
23 pursuant to this Act or a private cause of action, or both.

24 (b) It is a violation of this Act for a developer,  
25 contractor, including general contractor, ~~an~~ employer, or

1 entity to retaliate against a person for:

2 (1) making a complaint to a developer, contractor,  
3 including general contractor, an employer, or entity, to a  
4 co-worker, to a community organization, before a public  
5 hearing, or to a State or federal agency that rights  
6 guaranteed under this Act have been violated;

7 (2) causing to be instituted any proceeding under or  
8 related to this Act; or

9 (3) testifying or preparing to testify in an  
10 investigation or proceeding under this Act.

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

12 (820 ILCS 185/60)

13 Sec. 60. Private right of action.

14 (a) An interested party or person aggrieved by a violation  
15 of this Act or any rule adopted under this Act by a developer,  
16 contractor, including general contractor, an employer, or  
17 entity may file suit in circuit court, in the county where the  
18 alleged offense occurred or where any person who is party to  
19 the action resides, without regard to exhaustion of any  
20 alternative administrative remedies provided in this Act.  
21 Actions may be brought by one or more interested parties or  
22 persons for and on behalf of themselves and other persons  
23 similarly situated. An interested party or person aggrieved by  
24 a violation of this Act or any rule adopted ~~A person whose~~  
25 ~~rights have been violated~~ under this Act by an employer or

1 entity is entitled to collect:

2 (1) the amount of any wages, salary, employment  
3 benefits, or other compensation denied or lost to the  
4 person by reason of the violation, plus an equal amount in  
5 liquidated damages;

6 (2) compensatory damages and an amount up to \$500 for  
7 each violation of this Act or any rule adopted under this  
8 Act;

9 (3) in the case of unlawful retaliation, all legal or  
10 equitable relief as may be appropriate; and

11 (4) attorney's fees and costs.

12 (b) The right of an interested party or aggrieved person  
13 to bring an action under this Section terminates upon the  
14 passing of 3 years from the final date on which any person  
15 performed ~~of performing~~ services on the project for ~~to~~ the  
16 employer or entity. This limitations period is tolled if an  
17 employer or entity has deterred a person's exercise of rights  
18 under this Act.

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

20 (820 ILCS 185/63)

21 Sec. 63. Individual liability. In addition to an  
22 individual who is an employer pursuant to Section 5 of this  
23 Act, any officer of a corporation or agent of a corporation who  
24 knowingly permits such employer to violate the provisions of  
25 this Act may be held individually liable for all violations

1 and penalties assessed under this Act. This Section shall not  
2 apply to an individual who is an officer or agent of a  
3 corporation which on the project under investigation satisfies  
4 the responsible bidder requirements set forth in the Illinois  
5 Procurement Code. An individual officer or agent of an  
6 incorporated developer or general contractor who knowingly  
7 permits an employer to violate this Act may be held  
8 individually liable for all violations and penalties assessed  
9 under this Act.

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