

AN ACT concerning employment.

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

Section 5. The Minimum Wage Law is amended by changing Section 12 as follows:

(820 ILCS 105/12) (from Ch. 48, par. 1012)

Sec. 12. (a) If any employee is paid by his or her employer less than the wage to which he or she is entitled under the provisions of this Act, the employee may recover in a civil action treble the amount of any such underpayments together with costs and such reasonable attorney's fees as may be allowed by the Court, and damages of 5% of the amount of any such underpayments for each month following the date of payment during which such underpayments remain unpaid. Any agreement between the employee and the employer to work for less than such wage is no defense to such action. At the request of the employee or on motion of the Director of Labor, the Department of Labor may make an assignment of such wage claim in trust for the assigning employee and may bring any legal action necessary to collect such claim, and the employer shall be required to pay the costs incurred in collecting such claim. Every such action shall be brought within 3 years from the date of the underpayment. Such employer shall be liable to

the Department of Labor for a penalty in an amount of up to 20% of the total employer's underpayment where the employer's conduct is proven by a preponderance of the evidence to be willful, repeated, or with reckless disregard of this Act or any rule adopted under this Act. Such employer shall be liable to the Department for an additional penalty of \$1,500. All administrative penalties ordered under this Act shall be paid by certified check, money order, or an electronic payment system designated by the Department for such purposes and shall be made 7 payable to the Department's Wage Theft Enforcement Fund. Such employer shall be additionally liable to the employee for damages in the amount of 5% of the amount of any such underpayments for each month following the date of payment during which such underpayments remain unpaid. These penalties and damages may be recovered in a civil action brought by the Director of Labor in any circuit court. In any such action, the Director of Labor shall be represented by the Attorney General.

If an employee collects damages of 5% of the amount of underpayments as a result of an action brought by the Director of Labor, the employee may not also collect those damages in a private action brought by the employee for the same violation. If an employee collects damages of 5% of the amount of underpayments in a private action brought by the employee, the employee may not also collect those damages as a result of an action brought by the Director of Labor for the same

violation.

(b) If an employee has not collected damages under subsection (a) for the same violation, the Director is authorized to supervise the payment of the unpaid minimum wages and the unpaid overtime compensation owing to any employee or employees under Sections 4 and 4a of this Act and may bring any legal action necessary to recover the amount of the unpaid minimum wages and unpaid overtime compensation and an equal additional amount as damages, and the employer shall be required to pay the costs incurred in collecting such claim. Such employer shall be additionally liable to the Department of Labor for up to 20% of the total employer's underpayment where the employer's conduct is proven by a preponderance of the evidence to be willful, repeated, or with reckless disregard of this Act or any rule adopted under this Act. Such employer shall be liable to the Department of Labor for an additional penalty of \$1,500, payable to the Department's Wage Theft Enforcement Fund. The action shall be brought within 5 years from the date of the failure to pay the wages or compensation. Any sums thus recovered by the Director on behalf of an employee pursuant to this subsection shall be deposited into the Department of Labor Special State Trust Fund, from which the Department shall disburse the sums owed to the employee or employees. The Department shall conduct a good faith search to find all employees for whom it has recovered unpaid minimum wages or unpaid overtime

~~compensation. All disbursements authorized under this Section shall be made by certified check, money order, or an electronic payment system designated by the Department paid to the employee or employees affected. Any sums which, more than one year after being thus recovered, the Director is unable to pay to an employee shall be deposited into the General Revenue Fund.~~

(c) The Department shall hold any moneys due to employees that it is unable to locate in the Department of Labor Special State Trust Fund for no less than 3 years after the moneys were collected.

Beginning November 1, 2023, or as soon as is practical, and each November 1 thereafter, the Department shall report any moneys due to employees who cannot be located and that have been held by the Department in the Department of Labor Special State Trust Fund for 3 or more years and moneys due to employees who are deceased to the State Treasurer as required by the Revised Uniform Unclaimed Property Act. The Department shall not be required to provide the notice required under Section 15-501 of the Revised Uniform Unclaimed Property Act.

Beginning July 1, 2023, or as soon as is practical, and each July 1 thereafter, the Department shall direct the State Comptroller and State Treasurer to transfer from the Department of Labor Special State Trust Fund the balance of the moneys due to employees who cannot be located and that have been held by the Department in the Department of Labor Special

State Trust Fund for 3 or more years and moneys due to employees who are deceased as follows: (i) 15% to the Wage Theft Enforcement Fund and (ii) 85% to the Unclaimed Property Trust Fund.

The Department may use moneys in the Wage Theft Enforcement Fund for the purposes described in Section 14 of the Illinois Wage Payment and Collection Act.

(d) The Department may adopt rules to implement and administer this Section.

(Source: P.A. 101-1, eff. 2-19-19.)

Section 10. The Illinois Wage Payment and Collection Act is amended by changing Sections 11.5 and 14 as follows:

(820 ILCS 115/11.5)

Sec. 11.5. Departmental wage recovery; remittance to aggrieved employee.

(a) Upon the recovery of unpaid wages, wage supplements, or final compensation from an employer that has violated this Act, ~~the Department shall conduct a good faith search to find the aggrieved employee. If, after conducting a good faith search for the aggrieved employee, the Department is unable to find the aggrieved employee,~~ the Department shall deposit the amount recovered into the Department of Labor Special State Trust Fund, from which the Department shall disburse the sums owed to the employee or employees. The Department shall

conduct a good faith search to find all employees for whom it has recovered unpaid wages, wage supplements, or final compensation. All disbursements authorized under this Section shall be made by certified check, money order, or an electronic payment system designated by the Department.

(a-5) The Department shall hold any moneys due to employees that it is unable to locate in the Department of Labor Special State Trust Fund for no less than 3 years after the moneys were collected.

Beginning November 1, 2023, or as soon as is practical, and each November 1 thereafter, the Department shall report any moneys due to employees who cannot be located and that have been held by the Department in the Department of Labor Special State Trust Fund for 3 or more years and moneys due to employees who are deceased to the State Treasurer as required by the Revised Uniform Unclaimed Property Act. The Department shall not be required to provide the notice required under Section 15-501 of the Revised Uniform Unclaimed Property Act.

Beginning July 1, 2023, or as soon as is practical, and each July 1 thereafter, the Department shall direct the State Comptroller and State Treasurer to transfer from the Department of Labor Special State Trust Fund the balance of the moneys due to employees who cannot be located and that have been held by the Department in the Department of Labor Special State Trust Fund for 3 or more years and moneys due to employees who are deceased as follows: (i) 15% to the Wage

Theft Enforcement Fund and (ii) 85% to the Unclaimed Property Trust Fund.

The Department may use moneys in the Wage Theft Enforcement Fund for the purposes described in Section 14 of the Illinois Wage Payment and Collection Act.

(b) An aggrieved employee may make a request to the Department in order to recover unpaid wages, wage supplements, or final compensation that has been deposited into the Department of Labor Special State Trust Fund. The Department shall not require the employee to present a Social Security number or proof of United States citizenship. For the purpose of paying claims under this Section from the Department of Labor Special State Trust Fund to aggrieved employees, the Comptroller shall assign a vendor payment number to the Department. When an aggrieved employee makes a valid request for payment to the Department, the Department shall use the vendor payment number to process payment on behalf of the aggrieved employee.

(c) The Department shall adopt rules for the administration of this Section.

(Source: P.A. 99-762, eff. 1-1-17.)

(820 ILCS 115/14) (from Ch. 48, par. 39m-14)

Sec. 14. (a) Any employee not timely paid wages, final compensation, or wage supplements by his or her employer as required by this Act shall be entitled to recover through a

claim filed with the Department of Labor or in a civil action, but not both, the amount of any such underpayments and damages of 5% of the amount of any such underpayments for each month following the date of payment during which such underpayments remain unpaid. In a civil action, such employee shall also recover costs and all reasonable attorney's fees.

(a-5) In addition to the remedies provided in subsections (a), (b), and (c) of this Section, any employer or any agent of an employer, who, being able to pay wages, final compensation, or wage supplements and being under a duty to pay, wilfully refuses to pay as provided in this Act, or falsely denies the amount or validity thereof or that the same is due, with intent to secure for himself or other person any underpayment of such indebtedness or with intent to annoy, harass, oppress, hinder, delay or defraud the person to whom such indebtedness is due, upon conviction, is guilty of:

(1) for unpaid wages, final compensation or wage supplements in the amount of \$5,000 or less, a Class B misdemeanor; or

(2) for unpaid wages, final compensation or wage supplements in the amount of more than \$5,000, a Class A misdemeanor.

Each day during which any violation of this Act continues shall constitute a separate and distinct offense.

Any employer or any agent of an employer who violates this Section of the Act a subsequent time within 2 years of a prior

criminal conviction under this Section is guilty, upon conviction, of a Class 4 felony.

(b) Any employer who has been demanded or ordered by the Department or ordered by the court to pay wages, final compensation, or wage supplements due an employee shall be required to pay a non-waivable administrative fee to the Department of Labor in the amount of \$250 if the amount ordered by the Department as wages owed is \$3,000 or less; \$500 if the amount ordered by the Department as wages owed is more than \$3,000, but less than \$10,000; and \$1,000 if the amount ordered by the Department as wages owed is \$10,000 or more. Any employer who has been so demanded or ordered by the Department or ordered by a court to pay such wages, final compensation, or wage supplements and who fails to seek timely review of such a demand or order as provided for under this Act and who fails to comply within 15 calendar days after such demand or within 35 days of an administrative or court order is entered shall also be liable to pay a penalty to the Department of Labor of 20% of the amount found owing and a penalty to the employee of 1% per calendar day of the amount found owing for each day of delay in paying such wages to the employee. All moneys recovered as fees and civil penalties under this Act, except those owing to the affected employee, shall be deposited into the Wage Theft Enforcement Fund, a special fund which is hereby created in the State treasury. Moneys in the Fund may be used ~~only~~ for enforcement of this Act and for outreach and educational

activities of the Department related to the recovery of unpaid or underpaid compensation and the disbursement of moneys to affected parties.

(b-5) Penalties and fees under this Section may be assessed by the Department and recovered in a civil action brought by the Department in any circuit court or in any administrative adjudicative proceeding under this Act. In any such civil action or administrative adjudicative proceeding under this Act, the Department shall be represented by the Attorney General.

(c) Any employer, or any agent of an employer, who discharges or in any other manner discriminates against any employee because that employee has made a complaint to his or her employer, to the Director of Labor or his or her authorized representative, in a public hearing, or to a community organization that he or she has not been paid in accordance with the provisions of this Act, or because that employee has caused to be instituted any proceeding under or related to this Act, or because that employee has testified or is about to testify in an investigation or proceeding under this Act, is guilty, upon conviction, of a Class C misdemeanor. An employee who has been unlawfully retaliated against shall be entitled to recover through a claim filed with the Department of Labor or in a civil action, but not both, all legal and equitable relief as may be appropriate. In a civil action, such employee shall also recover costs and all reasonable attorney's fees.

Public Act 103-0182

HB3227 Enrolled

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(Source: P.A. 102-50, eff. 7-9-21.)

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