No. 132016

In the Supreme Court of Illinois

LISA JOHNSON, ET AL.,
Plaintiffs-Appellants,

v.

AMAZON.COM SERVICES LLC,
Defendant-Appellee.

Question of Law Certified by the United States Court of Appeals for the Seventh Circuit, No. 24-1028

Question of Law Accepted under Supreme Court Rule 20 on July 11, 2025

On Appeal from the United States District Court for the Northern District of Illinois, Eastern Division
No. 1:23-cv-00685, Hon. Thomas M. Durkin

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INTRODUCTION

This Court agreed to answer a narrow question of law posed by the Seventh Circuit. The question is whether the Illinois Minimum Wage Law ("IMWL") incorporates the provision of the federal Portal-to-Portal Act ("PPA") codified in 29 U.S.C. § 254(a)(2). That provision permits employers to withhold pay from employees for time they spend completing tasks "preliminary" or "postliminary" to their "principal" work activities. Employers may withhold such pay, under § 254(a)(2), even if they require their employees to complete the at-issue tasks *and* require them to do so on the employers' premises.

The IMWL does not incorporate that PPA provision. It does not distinguish between the compensability of—or even mention—"preliminary," "postliminary," or "principal" work activities. Nor does it cite the PPA, much less adopt it by reference. But the IMWL does incorporate, by specific reference, other parts of the Fair Labor Standards Act ("FLSA"), which is the federal law in which the PPA sits. By adopting some of the FLSA, and leaving out the PPA, the IMWL evinces a clear intent *not to* adopt the PPA. The result is: Amazon cannot win the dispute before the Court, per the IMWL's plain text.

Amazon apparently knows it cannot win the Seventh Circuit's question, so it poses a different question to the Court. It pretends that "the question presented here is whether the term 'workweek' in the IMWL's overtime provision is coextensive with the term 'workweek' in the FLSA's overtime

provision, as amended by the [PPA]." (Resp. at 2).[1] That, *prima facie*, is not the certified question—it is much broader.

More importantly: Amazon's newly-proposed question is irrelevant to the parties' dispute. That dispute concerns whether the IMWL compensates preliminary and postliminary activities, like carrying heavy equipment to worksites, setting up workstations, or completing start-of-shift medical examinations like the ones Amazon made Plaintiffs complete to begin each warehouse shift. Amazon thinks the IMWL cannot compensate such activities if it adopts the FLSA's definition of the term "workweek."

But Amazon is wrong. Under the FLSA, the term "workweek" includes all time during which an employee is required to be on the employer's premises, on duty, or at a prescribed workplace. This definition does not exclude preliminary and postliminary activities. And the PPA does not redefine "workweek." It just creates an exemption under which employers need not compensate employees for time spent on certain "workweek" activities (namely: preliminary and postliminary tasks). This means the IMWL compensates preliminary and postliminary activities *even if* it uses the FLSA's "workweek" definition so long as it *does not* adopt the PPA. Therefore,

[1] Citations to "Resp." are to Amazon's response brief; to "IDOL Br." are to the Illinois Department of Labor and Illinois Attorney General's *amicus* brief; to "A" are to Plaintiffs' Appendix; and to "SA" are to Amazon's Supplemental Appendix.

Amazon's newly-proposed question does not control the parties' dispute; only the Seventh Circuit's question matters.

Consequently, the Court should simply evaluate the question that the Seventh Circuit asked. And it should resolve that question in Plaintiffs' favor, because the IMWL does not incorporate the PPA.

ARGUMENT

I. The Court should determine whether the IMWL adopts the PPA, not whether the IMWL uses the FLSA's "workweek" definition.

The Seventh Circuit posed the following question to this Court: "Does the Illinois Minimum Wage Law, 820 ILCS § 105/4a, incorporate the exclusion from compensation for employee activities that are preliminary or postliminary to their principal activities, as provided under the federal Portal-to-Portal Act 29 U.S.C. § 254(a)(2)?" (A126). The Court should answer that question because it controls the parties' dispute. The Court should ignore Amazon's alternative question because it is irrelevant.

A. Whether the IMWL adopts the PPA controls the parties' dispute over whether the IMWL compensates preliminary and postliminary activities.

The parties' dispute hinges on whether the IMWL incorporates the PPA. Plaintiffs originally alleged that Amazon failed to pay them overtime wages, under the IMWL and FLSA, for time spent completing mandatory medical examinations at the start of each warehouse shift. (A72–73). The district court dismissed Plaintiffs' FLSA claims, holding that the PPA rendered the medical

examinations non-compensable "preliminary" activities that were not "integral and indispensable" to Plaintiffs' "principal" activities. (A99). Based *solely* on that same PPA standard, the district court dismissed Plaintiffs' IMWL claims as well. (A102–103). Plaintiffs only appealed the dismissal of their IMWL claims, so determining whether the IMWL in fact adopts the PPA's preliminary and postliminary activity standard controls Plaintiffs' appeal.

This is indisputable, notwithstanding Amazon's contrary belief. Amazon thinks "the question presented here is whether the term 'workweek' in the IMWL's overtime provision is coextensive with the term 'workweek' in the FLSA's overtime provision, as amended by the [PPA]." (Resp. at 2). But neither the district court nor the Seventh Circuit even considered that question. (A97–104, 107–126). All courts previously involved in this case agree: the relevant question is whether the IMWL adopts the PPA.

B. Whether the IMWL adopts the FLSA's "workweek" definition does not control whether the IMWL compensates preliminary and postliminary activities.

Conversely, whether the IMWL adopts the FLSA's "workweek" definition is irrelevant. Amazon presumes the IMWL cannot compensate preliminary and postliminary activities if its "workweek" definition mirrors the FLSA's. But that is false. Under the FLSA, the term "workweek" *includes* preliminary and postliminary activities. And the PPA does not amend that definition—it just creates a liability exemption.

1. The FLSA's "workweek" definition includes preliminary and postliminary activities.

The FLSA's "workweek" definition includes preliminary and postliminary tasks. FLSA regulations state that the "workweek" is "all the time during which an employee is necessarily required to be on the employer's premises, on duty or at a prescribed work place." 29 C.F.R. § 785.7 (quoting *Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680 (1946)). This definition comes from the U.S. Supreme Court's *Anderson* decision. *Id.* On its face, the definition encompasses preliminary and postliminary activities if they occur "on the employer's premises" and are "required." *Id.*

2. The PPA does not amend the FLSA's "workweek" definition, it simply exempts certain "workweek" activities from compensability.

The PPA does not change this "workweek" definition. It neither includes the term "workweek" nor purports to amend any term. 29 U.S.C. § 254(a). It states:

> [N]o employer shall be subject to any liability or punishment under the Fair Labor Standards Act of 1938 . . . on account of the failure of such employer to pay an employee minimum wages, or to pay an employee overtime compensation, for or on account of . . . activities which are preliminary to or postliminary to [the employee's] principal activity or activities, which occur either prior to the time on any particular workday at which such employee commences, or subsequent to the time on any particular workday at which he ceases, such principal activity or activities.

Id. This text simply creates a "liability" exemption allowing employers to withhold pay for certain activities that fall within the workweek. *Id.* The

PPA's next section confirms this interpretation—it says § 254(a) "relieve[s] . . . employer[s] from liability," not that it redefines any term. *Id.* § 254(b).

The PPA's "workday" language also supports Plaintiffs' interpretation. As shown above: the PPA renders "preliminary" tasks non-compensable when they "occur . . . prior to the time on any particular workday at which [an] employee commences" their "principal" activities. *Id.* This phrasing shows that "preliminary" tasks occur "on" the "workday," meaning they occur *during* the workday[2] (the PPA just categorizes those tasks as non-compensable based on when they occur). Because PPA "workdays" include preliminary tasks, and according to Amazon itself "workdays" add up to "workweeks,"[3] the FLSA "workweek" encompasses preliminary tasks.[4]

FLSA regulations and U.S. Supreme Court precedent also show that the PPA does not redefine "workweek," but instead creates a liability exception. FLSA regulations explicitly state that "[t]he Portal-to-Portal Act did not change [*Anderson's*] rule [defining 'workweek'] except to provide an exception for preliminary and postliminary activities." 29 C.F.R. § 785.7. And *IBP, Inc.*

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[2] Dictionaries from the time of the PPA's enactment defined "on" to include: "During, as [in] *on* Monday." *On*, WEBSTER'S NEW AMERICAN DICTIONARY (1947) (emphasis in original).

[3] Amazon says the PPA "clarified that 'workday'—and thus 'workweek'—does not include time spent on" preliminary and postliminary activities. (Resp. at 15). In reality, as discussed, the PPA just states the parts of the "workday" at which compensation starts and ends.

[4] The same logic applies to postliminary tasks.

v. Alvarez likewise states that "[o]ther than its express *exceptions* for travel to and from the location of the employee's 'principal activity,' and for activities that are preliminary or postliminary to that principal activity, the Portal-to-Portal Act does not purport to change this Court's earlier descriptions of the terms 'work' and 'workweek,' or to define the term 'workday.'" 546 U.S. 21, 28 (2005) (emphasis added).

That the PPA creates a liability exemption, and does not redefine a term, is also clear from the congressional record. The Senate Report accompanying Amazon's brief describes the PPA as a "bill to *exempt* employers from *liability* for portal-to-portal wages." (SA1 (emphasis added)). And it says the "public interest requires correction of the *condition* now presented by the Portal-to-Portal claims." (*Id.*) (emphasis added). It does not call for a correction of the term "workweek."

Still, Amazon insists the PPA redefines "workweek," citing 29 U.S.C. § 251. (*See* Resp. at 14). That code section contains the PPA's "congressional findings and declaration of policy." 29 U.S.C. § 251. Amazon asserts that § 251 reflects Congress's intent to redefine "workweek" via the PPA because, in § 251, "Congress criticized the Court's broad 'interpretations' of 'work' and 'workweek.'" (Resp. at 14).

That is a misquotation; § 251 does not mention the terms "work" or "workweek." 29 U.S.C. § 251. It states "that the Fair Labor Standards Act of 1938, as amended, has been interpreted judicially in disregard of long-

established customs, practices, and contracts between employers and employees, thereby creating wholly unexpected *liabilities*." *Id.* (emphasis added). This aligns with Plaintiffs' (correct) interpretation of the PPA: Congress wrote it to create a liability exemption, not to redefine "workweek."[5]

Amazon also asserts that, per *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442 (2016), the PPA "'clarified' the meaning of the term 'workweek.'" (Resp. at 6 (quoting 577 U.S. at 447)). Not true. *Tyson* says the PPA "clarified that compensable work does not include . . . 'preliminary or postliminary activities.'" 577 U.S. at 447. This passage does not use the term "workweek" or imply that the PPA redefined that term. *Id.*

Next, Amazon says the PPA resembles Illinois legislation "that clarifies, rather than changes, the meaning of an existing statute." (*See* Resp. at 16). Interpreting a law as a clarification makes sense when, for example, "the enacting body declared that it was clarifying a prior enactment." *K. Miller Const. v. McGinnis*, 238 Ill. 2d 284, 299 (2010). But Congress made no such declaration regarding the PPA. And the circumstances surrounding the PPA indicate Congress did *not* intend for it to clarify the FLSA's "workweek" definition, as discussed.

[5] Amazon misquotes § 251 several more times, asserting that it says something about the terms "work" or "workweek" when, in reality, it does not. (Resp. at 14).

3. The IMWL can thus compensate preliminary and postliminary activities, even if it uses the FLSA's "workweek" definition, if it does not adopt the PPA.

Consequently, it is immaterial whether the IMWL adopts the FLSA's definition of "workweek." The IMWL could employ that definition and still compensate preliminary and postliminary activities, if it does not adopt the PPA. The Court should therefore focus on the Seventh Circuit's question: whether the IMWL incorporates 29 U.S.C. § 254(a)(2)'s PPA exemption.

II. The IMWL does not incorporate the PPA.

A. The IMWL's text shows that it does not adopt the PPA.

The Court should hold that the IMWL does not adopt § 254(a)(2)'s PPA provision. The IMWL's plain text requires that conclusion. And Amazon fails to persuasively argue otherwise.

1. The IMWL is silent as to the PPA and incorporates other parts of the FLSA, meaning it rejects the PPA.

The IMWL's text unequivocally rejects § 254(a)(2)'s PPA exemption. Two rules of statutory construction are instructive.

First, the IMWL does not adopt § 254(a)(2)'s PPA exemption because the IMWL is silent as to that exemption. A statute silent as to a second law evinces a clear intent not to adopt it. *See Stinson v. Chicago Bd. of Election Comm'rs*, 407 Ill. App. 3d 874, 877 (2011) (statute silent regarding notice requirement "clear[ly] and unambiguous[ly]" did not incorporate notice requirement). The IMWL does not mention the PPA or distinguish between "preliminary,"

"postliminary," and "principal" activities, like the at-issue PPA provision. 820 ILCS §§ 105/1 *et seq*. So, the IMWL eschews that provision.

Amazon says "the IMWL is not 'silent'" because its "overtime provision uses the same language as the FLSA's overtime provision." (Resp. at 27). That misses the point. The IMWL's overtime provision is silent *as to the PPA*, which is separate from the FLSA's overtime provision. *See* 820 ILCS § 105/4a; *compare* 29 U.S.C. § 207(a)(1), *with* 29 U.S.C. § 254(a)(2). That is why engrafting the at-issue *PPA* standards into the IMWL would be senseless.

Amazon also criticizes Plaintiffs' statutory silence argument based on Amazon's misinterpretation of the FLSA and IMWL. Amazon thinks the FLSA's "workweek" definition somehow includes the PPA's exemptions. (Resp. at 27). And Amazon thinks that, by using the term "workweek" in its overtime provision, the IMWL "wholesale" adopts the FLSA's overtime provision, including this PPA-inclusive "workweek" definition. (*Id.*). Amazon thus finds it "unremarkable" that "the IMWL does not copy language from the PPA." (*Id.*). This line of reasoning fails because the FLSA does not, in reality, use a PPA-inclusive "workweek" definition. *Supra* Section I.B.

And even if the FLSA did use a PPA-inclusive "workweek" definition, Illinois never intended to adopt such an exemption-inclusive "workweek" definition from federal law. The IMWL's overtime provision incorporates several FLSA overtime exemptions by name. 820 ILSC §§ 105/4a(2)(D), 105/4a(2)(E), 105/4a(2)(F), 105/4a(2)(J). And it patterns several additional

overtime exemptions off of FLSA exemptions without naming the FLSA. *Compare* 820 ILCS § 105/4a(2)(A), *with* 29 U.S.C. § 213(b)(10)(A); *compare* 820 ILCS § 105/4a(2)(B), *with* 29 U.S.C. § 213(b)(10)(B); *compare* 820 ILCS § 105/4a(2)(C), *with* 29 U.S.C. § 213(b)(12).

All this language would be surplusage if using the term "workweek" in the IMWL overtime provision automatically imported FLSA overtime exemptions into Illinois law. This matters because the rule against "surplusage" bars interpretations that "render any [statutory] term superfluous." *People v. Reed*, 2025 IL 130595, ¶ 89 (2025). The Court should reject Amazon's argument that, by using the term "workweek," the IMWL adopted the exemption-inclusive definition of that term that Amazon (wrongly) attributes to the FLSA.

Second, the IMWL's text rejects the PPA under the doctrine of *expressio unius est exclusio alterius*. Per that doctrine, "the expression of one thing" in a statute implies "the exclusion of another." *Metzger v. DaRosa*, 209 Ill. 2d 30, 44 (2004). Here: the IMWL's overtime provision expressly adopts several FLSA overtime exemptions. 820 ILCS §§ 105/4a(2)(D), 105/4a(2)(E), 105/4a(2)(F), 105/4a(2)(J). But it does not adopt the at-issue PPA exemption, meaning it rejects that exemption. *Metzger*, 209 Ill. 2d at 44.

Amazon argues otherwise because it thinks the *expressio unius* canon only applies where a statute expressly includes a provision in one section and omits it in a "parallel section." (Resp. at 29). But *Bitner v. City of Pekin*, 2025

IL 131039 (2025) forecloses that argument. *Bitner* concerns the Illinois Public Employee Disability Act ("IPEDA"). *Id.* ¶ 1. IPEDA "expressly prohibits" several types of disability pay withholdings. *Id.* ¶ 30. But it "says nothing" about employment tax withholdings, so *Bitner* concludes IPEDA does not prohibit employment tax withholdings from disability pay "[u]nder the maxim of *expressio unius est exclusio alterius*." *Id.* ¶¶ 30, 35. *Bitner* reaches this conclusion even though Amazon's proposed "parallel section" requirement would prevent it. The *expressio unius* canon demonstrates the IMWL does not adopt the PPA.

Finally, even if the above interpretive principles left the IMWL ambiguous about adopting the PPA (which they do not), the Court should still interpret the IMWL to reject the PPA. Where "remedial legislation" is "ambiguous," it "should be construed liberally to effectuate it purposes." *S. N. Nielsen Co. v. Pub. Bldg. Comm'n of Chicago*, 81 Ill. 2d 290, 298 (1980). The IMWL is remedial legislation meant to protect the "well-being" and "wage[s]" of "workers." 820 ILCS § 105/2. Compensating workers for preliminary and postliminary tasks supports the statute's purposes.

2. The IMWL is not "closely patterned" on the FLSA in a way that suggests it adopts a PPA-inclusive "workweek" definition.

Amazon nevertheless pushes the Court to write a PPA-inclusive "workweek" definition into the IMWL, asserting that the IMWL is "closely patterned" on, and "substantially similar" to, the FLSA. (Resp. at 24). The

"substantially similar" language that Amazon identifies consists of the IMWL's and FLSA's baseline overtime provisions. (*Id.*). Those provisions each require "employer[s]" to compensate "employee[s]" at one-and-a-half times their "regular rate" for hours worked in "excess" of forty hours per "workweek." 820 ILCS § 105/4a(1); 29 U.S.C. § 207(a)(1).

These generic similarities do not imply that the IMWL adopts a PPA-inclusive "workweek" definition from the FLSA. The PPA is located outside of, and uses different language than, the FLSA's overtime provision. *Compare* 29 U.S.C. § 207(a)(1), *with* 29 U.S.C. § 254(a). Logically, similarities between the IMWL's and FLSA's overtime provisions say nothing about whether the IMWL incorporates *different* FLSA language found *outside of* the FLSA's overtime section. *See Rockford Police Benev. & Protective Ass'n v. Morrissey*, 398 Ill. App. 3d 145, 153 (2010) (where state and federal law differ, they are "subject to a different interpretation").

Nor do the "plain meanings of 'work' and 'workweek'" support Amazon's position. (Resp. at 23). Because the IMWL uses "workweek" without defining it or referencing federal law, that term's relevant "plain meaning" is its dictionary definition from when Illinois enacted the IMWL's overtime provision.[6] Back then, dictionaries defined "workweek" as "the hours or days

[6] *See People v. Comage*, 241 Ill. 2d 139, 144 (2011) (explaining "it is appropriate to employ a dictionary definition to ascertain [an undefined term's] meaning" and relying on Webster's Dictionary "from th[e] time" a statute was enacted).

of work in a calendar week.'" *Workweek*, WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY (1976). And they defined "work" as either "the labor, task, or duty that affords one his accustomed means of livelihood" or "activity in which one exerts strength or faculties to do or perform." *Work* WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY (1976). Preliminary and postliminary activities can certainly include duties that afford employees their livelihood and can require exertion or faculties to perform.[7] So, the relevant, plain meaning of "workweek" includes preliminary and postliminary activities, which conflicts with Amazon's PPA-inclusive definition of that term, indicating the IMWL does not adopt Amazon's definition.

Amazon also notes that the IMWL and FLSA were "enacted to accomplish the same object": promoting "the health, efficiency and general well-being of workers." (Resp. at 25 (citations and quotation marks omitted)). This is immaterial. Two laws with the same goal need not pursue it in identical ways. And the FLSA's "savings clause" "expressly" permits "state or local requirements that are more generous than the federal law." *Johnson v. Amazon.com Servs. LLC*, 142 F.4th 932, 938 (7th Cir. 2025). Interpreting the IMWL as compensating more activities than the FLSA is consistent with both statutes' texts and purposes.

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[7] Preliminary and postliminary activities can include things like "loading and unloading of equipment and tools" into, and out of, vans. *Cortes-Diaz v. DL Reforestation,* No. 1:20-cv-00666, 2022 WL 833334, at *9 (D. Or. Mar. 21, 2022).

Amazon next states that "Illinois courts have regularly looked to the FLSA for guidance when interpreting the IMWL." (Resp. at 25 (citations and quotation marks omitted)). That, also, is immaterial. Courts do sometimes use FLSA precedent "to determine whether an employer has committed a violation under the [IMWL]." *Soucek v. Breath of Life Pro. Servs.,* 2021 IL App (1st) 210413, ¶ 68 (2021) (quotation omitted). But "this is true only for the [IMWL] provisions that incorporate the FLSA." *Id.* Where, as here, IMWL provisions "do not contain such an express incorporation of the FLSA's language or regulations," FLSA cases are "not binding" on Illinois courts. *Id.* (quotation omitted).

Amazon's caselaw does not undermine this conclusion. (*See* Resp. at 25). The cases support interpreting the IMWL and FLSA coextensively where the two laws uniformly speak or are uniformly silent. *Mercado v. S&C Electric Company*, 2025 IL 129526, ¶ 27 (2025) (evaluating state law exclusion also found in 29 U.S.C. § 207(e)(1) of the FLSA); *Kerbes v. Raceway Associates*, 2011 IL App (1st) 110318, ¶ 26 (2011) (IMWL and FLSA regulations both barred schedule changes "designed to evade" their "overtime requirements"); *Lewis v. Giordano's Enterprises*, 397 Ill. App. 3d 581, 588–89 (2009) (neither IMWL nor FLSA expressly voided releases); *Haynes v. Tru-Green Corp.*, 154 Ill. App. 3d 967, 977 (1987) (IMWL and FLSA regulations were "precisely parallel[]"); *Bernardi v. Vill. of N. Pekin*, 135 Ill. App. 3d 589, 591(1985) (neither IMWL nor FLSA gave express direction regarding dispatchers' entitlement to hourly

minimum wage). The cases do not support importing an *express* FLSA exemption into the IMWL where the IMWL is silent as to that exemption.

3. The IMWL did not "inherit" a "settled" PPA-inclusive definition of "workweek" from the FLSA.

Amazon also argues that the IMWL "inherited" the FLSA's "settled," PPA-inclusive "workweek" definition. (Resp. at 26). But the IMWL does not even use a PPA-inclusive "workweek" definition. *Supra* Section I.B. And even if it did, Illinois never intended to adopt that definition. *Supra* Section II.A.1.

Next, Amazon notes that Illinois enacted the IMWL's overtime provision "decades after the FLSA and PPA were enacted" and says Illinois "would have been aware of" the PPA and its precipitating events. (Resp. at 26). True, but that supports Plaintiffs' argument. If the legislature was aware of the PPA and wanted to adopt its exemptions, it would have done so explicitly, just as it explicitly adopted other FLSA exemptions. *Supra* Section II.A.1.

B. The IMWL's regulations show that the IMWL does not adopt the PPA.

The IMWL's regulations also prove that Illinois law does not adopt the PPA or Amazon's PPA-inclusive "workweek" definition. IMWL regulations directly contradict the PPA, notwithstanding Amazon's counterarguments.

1. The IMWL regulation defining "hours worked" contradicts the PPA.

The IMWL regulation defining the compensable workweek is incompatible with the PPA. Title 56, Section 210.110 of the Illinois Administrative Code ("Section 210.110") defines compensable "hours worked"

under the IMWL to include "all the time an employee is required to be on duty, or on the employer's premises." Ill. Admin. Code tit. 56, § 210.110. Yet, under the PPA, *some* mandatory time on the employer's premises is not compensable (when spent on preliminary and postliminary tasks). 29 U.S.C. § 254(a)(2). Because Section 210.110 imposes liability where the PPA relieves liability, the IMWL cannot adopt the PPA.

There is more evidence that Section 210.110 rejects 29 U.S.C. § 254(a)(2)'s PPA provision. A separate PPA provision, from 29 U.S.C. § 254(a)(1), exempts some travel time from compensation. Although Section 210.110 does not incorporate § 254(a)(1), it does provide that an employee's travel is compensable when performed for the employer's benefit, and it incorporates FLSA regulations explaining when commute time is compensable under § 254(a)(1). Ill. Admin. Code tit. 56, § 210.110. Yet it *does not* incorporate any FLSA regulations implementing § 254(a)(2)'s preliminary and postliminary activity rules. *Id.* Because Section 210.110 *includes* some PPA rules (regarding § 254(a)(1)) and *excludes* the PPA rules at issue here (regarding § 254(a)(2)), the Court should interpret this exclusion as purposeful. *Kean v. Wal-Mart Stores,* 235 Ill. 2d 351, 368 (2009) (the "rules that govern construction of statutes also apply" to "administrative regulations").

Amazon's counterarguments go nowhere. Amazon dismisses Section 210.110's reference to federal regulations as "illustrative examples" reinforcing the connection between IMWL regulations and the PPA. (Resp. at 42). But

Section 210.110 does not broadly adopt PPA rules as examples—it directly adopts *specific* rules, from the Code of Federal Regulations, that make some off-premises travel time compensable. Ill. Admin. Code tit. 56, § 210.110 ("An employee's travel, performed for the employer's benefit" is "compensable work time as defined in 29 CFR 785.33 -- 785.41."). This highlights the decision of the Illinois Department of Labor ("IDOL") to *not* adopt the PPA's separate preliminary and postliminary activity rules.

Amazon also notes that Section 210.110 renders travel time completed as "part of the employee's primary duty" compensable. (Resp. at 41 (citation omitted)). And it says "[t]his connection to an employee's 'primary duties'—parallel to the focus on an employee's 'principal activities' in the PPA—reaffirms" that "the scope of the IMWL 'workweek' should align with the FLSA 'workweek.'" (*Id.*).

That is not a rational connection. The PPA's "principal activity" language first appears in its § 254(a)(1) travel time rules. 29 U.S.C. § 254(a). And Section 210.110's "primary duty" language also relates to travel time. Ill. Admin. Code tit. 56, § 210.110. Hence, Section 210.110's "primary duty" reference does not connect Section 210.110 to 29 U.S.C. § 254(a)(2). Rather, it indicates that an employee's travel performed for the employer's benefit is compensable under the IMWL just like under federal law.

Next, Amazon contends that Plaintiffs read Section 210.110 too broadly. Amazon says the regulation does not truly require employers to compensate

all mandatory time spent "on the employer's premises." (Resp. at 41–45). It asserts that the federal *Anderson* decision only required on-site time to be compensated when pursued "primarily for the benefit of the employer."[8] (*Id.* at 43 (quotation omitted)). Amazon implies a similar limitation should apply to Section 210.110.

This issue is irrelevant. Even if Section 210.110's "hours worked" definition *did* use a benefit-of-the-employer limitation—which it does not[9]—it would still conflict with the PPA. Section 210.110 would still require compensation for all mandatory, on-site tasks completed for an employer's benefit, whereas the PPA would still remove liability for such tasks when they are "preliminary" or "postliminary."

The Court can also ignore Amazon's argument that *de minimis* time is non-compensable under *Anderson*. (Resp. at 44). Neither the IMWL nor its regulations incorporate *Anderson*, and whether the IMWL has a *de minimis* exemption is not a question before the Court. Plus, that question has no

[8] Amazon misinterprets *Anderson* by implying it makes some mandatory on-site time non-compensable if not spent to benefit employers. In reality: *Anderson* reasoned that mandatory, on-site time *is* time that benefits employers. 328 U.S. at 691–92.

[9] Section 210.110's *exclusion* of benefit-of-the-employer language from its general compensable hours definition is obviously purposeful because Section 210.110 *includes* such language when defining a sub-type of compensable hours. Ill. Admin. Code tit. 56, § 210.110 (making "meal periods and time spent on-call away from the employer's premises" compensable "when such time is spent predominantly for the benefit of the employer").

bearing on this appeal. The IMWL could both (1) compensate preliminary and postliminary activities and (2) exempt them from compensability when they are *de minimis*.

Lastly, the Court should reject Amazon's policy arguments. Amazon says employers faced an "onslaught of [FLSA] lawsuits" after *Anderson*, which led to the PPA. (Resp. at 46). Amazon implies Illinois must have intended to avoid a similar "onslaught" of lawsuits in enacting the IMWL, meaning the IMWL must incorporate the PPA's exemptions. (*Id.*). Preliminarily: the Court should decline Amazon's invitation to determine whether it would be "wise or unwise" for Illinois to incorporate the PPA—that question is for "the judgment of the legislature." *People v. McCarty*, 86 Ill. 2d 247, 253 (1981) (citation omitted). Otherwise, the Court should find that rejecting the PPA *is* a wise way for Illinois to accomplish the IMWL's goals. Illinois passed the IMWL to protect the "health, efficiency and general well-being" of "workers," not to exempt employers from liability. 820 ILCS § 105/2. Ensuring employers pay workers for mandatory, on-site activities is consistent with promoting workers' well-being.

2. The IMWL regulation stating the IDOL "may refer to" the FLSA for guidance does not suggest that the IMWL adopts the PPA.

Moving on, Amazon believes Title 56, Section 210.120 of the Illinois Administrative Code ("Section 210.120") indicates that the IMWL incorporates the PPA. (Resp. at 39). It does not. Section 210.120 states that "[f]or guidance

in the interpretation of the [IMWL]," the IDOL "may refer to" FLSA regulations. Ill. Admin. Code tit. 56, § 210.120. That the IDOL "may refer to" FLSA regulations does not mean that the IDOL must. *Id.* And the IDOL has not interpreted the IMWL to incorporate the PPA, *see* Ill. Admin. Code tit. 56, § 210.110, so Section 210.120 is irrelevant.

C. The IMWL's legislative history indicates that the IMWL does not adopt the PPA.

The IMWL's legislative history shows that the IMWL does not incorporate the PPA or a PPA-inclusive "workweek" definition. Illinois enacted the IMWL twenty-four years after Congress enacted the PPA. P.A. 77-1451, § 1, eff. Sept. 6, 1971. The Illinois legislature was therefore aware of the PPA. *See In re Pension Reform Litig.*, 2015 IL 118585, ¶ 70 (2015). Yet it did not expressly adopt the PPA or employ its "preliminary" and "postliminary" activity language. The Court should infer that this was purposeful.

Amazon's counterarguments fall short. Amazon points out that, when Illinois amended the IMWL to add an overtime provision in 1976, "the bill's House sponsor," Representative Hanahan, "described the amendment as 'a makeup bill' enacted 'to catchup and make [Illinois] even with federal laws that cover most employees in Illinois.'" (Resp. at 31 (citation omitted)). Based on this statement, Amazon says the "IMWL was intended to make Illinois law 'even' with federal law," meaning the IMWL must incorporate a PPA-inclusive "workweek" definition. (*Id.*).

Amazon is wrong. Representative Hanahan did not intend to make the IMWL "even" with the FLSA in all respects, much less "even" with respect to the PPA. The IMWL originally did not cover "[a]ny employee who [was] covered under the provisions of the [FLSA]." (A22 (see § 1003(d)(7) of original version of IMWL)). Representative Hanahan's 1976 amendment removed that language. (A33). That removal is clearly what he was referring to when he described his bill as one to "make us even with federal laws that cover most employees in Illinois." (A29). His statements did not indicate the IMWL should fully mirror the FLSA; he believed the opposite, as he had said the prior year. (A28 (stating "[i]f we just followed the Federal Act, we wouldn't need a state law" and confirming the IMWL is "not identical to the Federal Act")).

Notably, Representative Hanahan also said the following regarding the 1976 amendment: "we make certain exceptions in the overtime provisions that time-and-a-half after 40 hours covers most people except for those outlined specifically in the Bill." (A30). This suggests the Illinois legislature carefully selected the IMWL's overtime exemptions and did not intend to adopt any not "outlined specifically" in the law (like the PPA's exemptions). *Id.*

Amazon also thinks the *absence* of legislative debate regarding the PPA shows that Illinois intended to adopt the PPA. (Resp. at 32–33). But the absence of debate regarding the PPA, and the IMWL's silence as to the PPA's compensability limitations, support the opposite conclusion. "[W]hen the

legislature intends" to place a "limitation" in a law, "it says so expressly." *McElwain v. Off. of Illinois Sec'y of State*, 2015 IL 117170, ¶ 13 (2015).

D. Persuasive authority from other jurisdictions suggests that the IMWL does not adopt the PPA.

Amazon's out-of-state authority does not support Amazon's position. *Buero v. Amazon.com, Inc.*, 521 P.3d 471 (Or. 2022) does hold that Oregon's wage laws do not compensate preliminary and postliminary activities. *Id.* at 473. But that makes sense because Oregon's wage rules mirror the PPA regarding such activities; they make "preparatory" and "concluding" activities non-compensable. *Id.* at 480. Neither the IMWL nor its regulations have similar language, so *Buero* is inapposite.

Amazon also cites cases construing Kentucky wage laws consistent with the PPA. (Resp. at 33–34 (citing *Vance v. Amazon.com, Inc.*, 852 F.3d 601 (6th Cir. 2017) and *Hughes v. UPS*, 677 S.W.3d 273 (Ky. 2023)). These cases are distinguishable because—unlike IMWL regulations—Kentucky regulations incorporate PPA rules applying 29 U.S.C. § 254(a)(2). *Hughes*, 677 S.W.3d at 280 ("Kentucky's wait-time regulation" "imports the Portal-to-Portal Act rule" from "29 C.F.R. §§ 785.14–16," which stems from 29 U.S.C. § 254(a)(2)).

Separately, the reasoning from *Vance* that Amazon highlights is flawed. *Vance* thinks courts should interpret Kentucky wage law consistently with the PPA "[a]bsent a clear indication that the General Assembly considered the [PPA] and deliberately rejected it." 852 F.3d at 612. That is backwards. In

"our system of federalism, [state courts] do not start with federal law and apply it unless the legislature manifests a contrary intent; rather, [they] presume that state law prevails unless [they] find a manifest intent to adopt federal law." *Roberts v. State*, 253 Ariz. 259, 266 (2022). As one court explained in a similar case:

> The [Maryland's legislature's] omission of any mention of the PPA speaks for itself and means that the PPA is not part of Maryland law. To conclude differently would be to require that the [Maryland legislature] expressly disavow the adoption or incorporation of federal laws or run the risk of being deemed to have incorporated the law in Maryland.

Amaya v. DGS, 479 Md. 515, 560 (2022). This Court should follow *Amaya* to avoid hamstringing the Illinois legislature.

The Illinois Attorney General and the IDOL agree. In response to Amazon's argument "that the IMWL should be interpreted in lockstep with the FLSA absent a 'compelling justification' to depart from it," they say such a rule "would deprive Illinois of its prerogative to make choices that differ from the federal government's, and would risk depriving Illinois workers of protections the General Assembly and the [IDOL] have conferred on them." (IDOL Br. at 21).

Anyway: *Vance* is an outlier. Nearly every court that has evaluated whether state wage laws incorporate the PPA have held in the negative where the wage laws are silent regarding the PPA. *Amazon.com Servs., LLC v. Malloy*, 141 Nev. Adv. Op. 50 (2025); *In re: Amazon.Com, Inc. Fulfillment Ctr.*

Fair Lab. Standards Act & Wage & Hour Litig., 905 F.3d 387, 402 (6th Cir. 2018); *Roberts*, 253 Ariz. at 263; *Amaya*, 278 A.3d at 1240; *Heimbach v. Amazon.com, Inc.*, 255 A.3d 191, 201–02 (Pa. 2021); *Frlekin v. Apple*, 457 P.3d 526, 532–33 (Cal. 2020); *see Segura v. J.W. Drilling*, 2015-NMCA-085, ¶ 9 (2015); *Dinkel v. MedStar Health*, No. 11-cv-998, 2015 WL 5168006, at *8 (D.D.C. Sept. 1, 2015).

Amazon thinks "all those cases" concerned "overtime statutes that are not closely patterned on federal law." (Resp. at 37). But the statutes all resemble federal law in the same way as the IMWL. They all require time-and-a-half pay for hours worked over forty per "workweek." Ariz. Rev. Stat. § 23-392 (requiring time-and-a-half pay for "each hour worked in excess of forty hours in one work week"); Cal. Code Regs. tit. 8, § 11070 (same for time worked over "40 hours in any workweek"); Md. Code, Lab. & Empl. § 3-415 (same for hours worked above "40 hours during 1 workweek"); Nev. Rev. Stat. § 608.018 (same for work-time exceeding "40 hours in any scheduled week of work"); 43 Pa. Stat. § 333.104 (same for "hours in excess of forty hours in a workweek"). These statutes do not incorporate PPA-inclusive "workweek" definitions, and neither does the IMWL.

CONCLUSION

The Court should hold that the IMWL does not incorporate 29 U.S.C. § 254(a)(2)'s PPA exemption.

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 6,000 words.

Dated: December 11, 2025

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CERTIFICATE OF FILING AND SERVICE

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