No. 132016

IN THE
SUPREME COURT OF ILLINOIS

LISA JOHNSON and GALE MILLER ANDERSON, 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)) There Heard on Appeal from the United States District Court for the Northern District of Illinois, Eastern Division, No. 1:23-cv-685)) The Honorable THOMAS M. DURKIN, Judge Presiding.

BRIEF OF *AMICI CURIAE* ILLINOIS ATTORNEY GENERAL AND ILLINOIS DEPARTMENT OF LABOR IN SUPPORT OF PLAINTIFFS-APPELLANTS

KWAME RAOUL
Attorney General
State of Illinois

JANE ELINOR NOTZ
Solicitor General

115 South LaSalle Street
Chicago, Illinois 60603
(312) 814-3000

Attorneys for *Amici Curiae*
Illinois Attorney General and
Illinois Department of Labor

ALEX HEMMER
Deputy Solicitor General
MATTHEW J. FREILICH
Assistant Attorney General
115 South LaSalle Street
Chicago, Illinois 60603
(312) 814-5526
CivilAppeals@ilag.gov (primary)
Alex.Hemmer@ilag.gov (secondary)

E-FILED
9/30/2025 2:25 PM
CYNTHIA A. GRANT
SUPREME COURT CLERK

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INTEREST OF *AMICI CURIAE*

This case presents an important question of first impression regarding the proper interpretation of the Illinois Minimum Wage Law ("IMWL"), 820 ILCS 105/1 *et seq.* (2024), and its implementing regulations.

Plaintiffs-Appellants Lisa Johnson and Gale Miller Anderson alleged that Defendant-Appellee Amazon.com Services LLC violated the federal Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201 *et seq.*, and the IMWL by refusing to compensate them for time they spent undergoing mandatory pre-shift COVID-19 screenings. *Johnson v. Amazon.com Servs. LLC*, 142 F.4th 932, 935-36 (7th Cir. 2025). The United States District Court for the Northern District of Illinois dismissed the plaintiffs' FLSA claims based on provisions added to the FLSA by the federal Portal-to-Portal Act ("PPA"), 29 U.S.C. § 251 *et seq.*, which provides that an employer need not compensate an employee for activities "preliminary" or "postliminary" to the employee's "principal" activities. *Johnson*, 142 F.4th at 936. The district court held that the plaintiffs could not prevail on their federal claims because the COVID-19 screenings at issue here were preliminary activities excluded from the FLSA by the PPA. *Id.* It then dismissed the plaintiffs' IMWL claims on the ground that the IMWL incorporates the PPA's exception for preliminary and postliminary activities, and so the screenings at issue here were likewise excluded from the IMWL's scope. *Id.*

The plaintiffs appealed, challenging only the dismissal of their IMWL claims and disputing the district court's conclusion that the IMWL incorporates the PPA's preliminary- and postliminary-activity exception. *Id.* After argument, the United States Court of Appeals for the Seventh Circuit certified to this Court the question whether "the [IMWL], 820 ILCS 105/4a, incorporate[s] the exclusion from compensation for employee activities that are preliminary or postliminary to their principal activities, as provided under the [PPA]." *Id.* at 944. This Court agreed to answer the question.

The Illinois Attorney General and Illinois Department of Labor share a substantial interest in explaining why this Court should answer the certified question in the negative — that is, hold that the IMWL does not incorporate the PPA's exclusion of preliminary and postliminary activities. The General Assembly has directed the Attorney General to protect Illinois's workforce, including by "ensur[ing] workers are paid properly, guarantee[ing] safe workplaces, and allow[ing] law-abiding business owners to thrive through healthy and fair competition." 15 ILCS 205/6.3(a) (2024). The General Assembly likewise has directed the Department to "foster, promote, and develop the welfare of wage earners" in Illinois. 20 ILCS 1505/1505-15 (2024).

To enable them to carry out these directives, the General Assembly has authorized both the Attorney General and the Department to enforce Illinois's wage laws, including the IMWL. 15 ILCS 205/6.3(b) (2024); 820 ILCS 105/11(d) (2024). The IMWL also authorizes the Department's Director to

"make and revise administrative regulations, including definitions of terms, as the Director deems appropriate to carry out the purposes of" the IMWL. 820 ILCS 105/10(a) (2024). Acting under that authority, the Department has issued regulations interpreting various provisions of the IMWL — including, most relevant here, the statutory term "hours worked" — that help determine whether Amazon properly excluded the time the plaintiffs spent in mandatory pre-shift COVID-19 screenings from their compensation. *See* 56 Ill. Admin. Code § 210.110.

The certified question — whether the IMWL incorporates the PPA's preliminary- and postliminary-activity exception — concerns the proper interpretation of the IMWL and its implementing regulations. And as the Seventh Circuit explained, that question is "of profound significance to workers and employers in Illinois." *Johnson*, 142 F.4th at 943. The Attorney General and the Department have a substantial interest in ensuring that the statute the General Assembly passed to protect Illinois workers, and the regulations the Department promulgated to implement it, are interpreted correctly. This shared interest will be impaired should this Court answer the certified question in the affirmative and hold that the IMWL and its implementing regulations impliedly incorporate the PPA's preliminary- and postliminary-activity exception. And doing so based on the argument Amazon advanced in the Seventh Circuit — that the IMWL must be interpreted identically with the FLSA absent a "compelling justification," Brief of Appellee

17, *Johnson v. Amazon.com Servs. LLC*, No. 24-1028 (7th Cir.) ("*Johnson* AE Br.") — could threaten that interest in ways that extend beyond the legal question at issue here.

For these reasons, the Attorney General and Department have a substantial interest in this case and can assist this Court by presenting their shared perspective on the important issue it raises.

ARGUMENT

The IMWL and its implementing regulations do not incorporate the PPA's preliminary- and postliminary-activity exception.

The IMWL and its implementing regulations generally require Illinois employers to compensate employees for all hours they are "required to be on duty, or on the employer's premises," 56 Ill. Admin. Code § 210.110, whether or not their activities are understood as "preliminary to" or "postliminary to" their "principal activity." The Court should thus answer the certified question in the negative: Although the federal PPA permits employers to exclude time that an employee spends engaged in such activities from total compensable hours, the IMWL does not.

As a general matter, although the IMWL parallels federal law in certain ways, it exceeds it in others, conferring greater protections on Illinois workers than does federal law. The FLSA has expressly permitted such variation since its passage in 1938. Accordingly, Illinois courts have correctly looked to federal standards for guidance where the two statutes and their implementing regulations parallel each other, but not where they materially diverge, as they do here. The PPA's preliminary- and postliminary-activity exception is one such area where the IMWL materially diverges from the FLSA, as several other state supreme courts have concluded with respect to their own wage-and-hour laws. That exception is found nowhere in the text of the IMWL, and the Department has promulgated regulations that cannot be reconciled with it. Reading the IMWL to impliedly incorporate the exception at issue here would

undermine the General Assembly's role in defining the IMWL's exceptions, the Department's role in interpreting the IMWL, and Illinois's prerogative to establish wage-and-hour protections for workers that exceed the federal baseline.

A. Federal law can serve as persuasive authority for courts interpreting the IMWL, but not when the relevant text materially differs.

For over a century, both the federal government and the States have regulated the wages that employers must pay employees in the United States. Congress passed the FLSA in 1938 in response to "labor conditions" it found "detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers." 29 U.S.C. § 202(a). The FLSA revolutionized employment law in the United States by setting a nationwide minimum wage and overtime premium for the first time. Marcia L. McCormick *et al.*, *Employment Law* § 4:1 (7th ed. 2024); *see* 29 U.S.C. §§ 206-07. But Congress simultaneously acknowledged the important role the States have traditionally played in this area. Instead of providing that the FLSA would preempt state law, it added a savings clause providing that the FLSA *does not* preempt state laws that are more protective of workers. McCormick *et al.*, *supra*, § 4:12; *see* 29 U.S.C. § 218(a). Thus, the FLSA sets baseline wage-and-hour standards, but permits States to confer additional protections on workers if they choose to do so. Today, most States "provide

more protection for workers than does the [FLSA]." McCormick *et al.*, *supra*, § 4:12.

Illinois has enacted multiple statutes that exceed the FLSA's baseline standards and confer additional protections on workers — most prominently, the IMWL, enacted in 1971. The IMWL sets a higher minimum wage than the FLSA does. *Compare* 820 ILCS 105/4(a)(1) (2024) *with* 29 U.S.C. § 206(a)(1)(C). The IMWL also has a longer statute of limitations and stronger remedies than the FLSA does. *Compare* 820 ILCS 105/12(a) (2024) *with* 29 U.S.C. §§ 216(b), 255(a). And the IMWL generally provides for broader coverage than the FLSA does — for instance, it does not exempt from its requirements employees who provide "companionship services" to the elderly or infirm, *see* 29 U.S.C. § 213(a)(15), or other domestic workers, *see id.* § 213(b)(21). In each instance, the General Assembly has exercised its policy judgment to chart a more protective course than Congress has taken on wage-and-hour standards for workers. And the Department, the state agency charged with administering the IMWL, has clarified that where the IMWL regulates concurrently with the FLSA, the stricter law prevails. 56 Ill. Admin. Code § 210.100.

Courts interpreting the IMWL or its implementing regulations may draw on similar provisions of the FLSA or its regulations (or caselaw interpreting those authorities) where the relevant provisions are materially identical or state law references federal law, but they do not reflexively assume

that Illinois has adopted a FLSA provision where the IMWL is silent absent a clear indication that the General Assembly or the Department in fact intended to do so.

Rather, courts have declined to apply federal authority in cases about the meaning of the IMWL or its implementing regulations where there are clear textual divergences between the federal and state statutes, or where there are other indications Illinois declined to adopt the relevant federal rule. For instance, multiple courts have agreed that the IMWL does not incorporate the FLSA's requirement to notify employees of tip credits because IMWL's text "does not parallel the FLSA" on that subject. *See Driver v. AppleIllinois, LLC*, 917 F. Supp. 2d 793, 799 (N.D. Ill. 2013); *Schmidt v. Smith & Wollensky, LLC*, 268 F.R.D. 323, 327 n.4 (N.D. Ill. 2010). And in *Molina v. First Line Sols. LLC*, 566 F. Supp. 2d 770 (N.D. Ill. 2007), the court declined to apply federal caselaw in interpreting the scope of the IMWL's motor carrier exemption because "[u]nlike the FLSA exemption," the IMWL exemption is expressly limited to employees who work for a "motor carrier," *id.* at 783. In cases of this sort, as one court explained, "interpreting the meaning of language in the IMWL is entirely different from incorporating into the IMWL" a provision "not expressed in that statute." *Driver*, 917 F. Supp. 2d at 800.

To be sure, many provisions of the IMWL parallel the FLSA's. Where they do, this Court has recognized that "federal guidance as to the meaning" of the FLSA can be "probative" of the IMWL's meaning. *Mercado v. S&C Elec.*

Co., 2025 IL 129526, ¶ 33. But unless Illinois law "expressly incorporate[s] the FLSA's provisions and regulations," federal authority is "merely persuasive" and not "binding." *Samano v. Temple of Kriya*, 2020 IL App (1st) 190699, ¶¶ 47-48. And federal authority's persuasive force depends on how much the relevant provisions of the FLSA and IMWL (or, where appropriate, their implementing regulations) resemble each other.

Take this Court's recent decision in *Mercado*, 2025 IL 129526. There, the Court looked to federal regulations interpreting the term "sums paid as gifts" in the FLSA for guidance in interpreting the corresponding term in the Department's regulations. *Mercado*, 2025 IL 129526, ¶ 33; *see* 56 Ill. Admin. Code § 210.410(a); 29 C.F.R. § 778.212(a)-(b). In determining whether the plaintiffs' performance bonuses were "gifts" and thus excludable from their regular rates, this Court found "persuasive" that the applicable federal rule deemed non-discretionary production-based payments not excludable and that federal courts applying the regulation generally included performance bonuses in an employee's regular rate. *Mercado*, 2025 IL 129526, ¶ 33. Thus, because the relevant terms were materially identical, and there was "no indication in the [IMWL] or its attendant regulations that the Department intended for the gift exclusion to have a different meaning in the state context than in the federal context," this Court looked to federal case law to confirm its reading of the IMWL. *Id.*

The appellate court likewise has looked to federal authority when interpreting provisions of the IMWL that reference or parallel those in the FLSA. For instance, it has done so in cases involving the IMWL's exemption for "'bona fide executive, administrative, or professional'" employees because the IMWL explicitly ties the meaning of that term to the definition supplied by the "'Fair Labor Standards Act of 1938 . . . and the rules adopted under that Act, as both exist[ed] on March 30, 2003.'" *See, e.g.*, *Resurrection Home Health Servs. v. Shannon*, 2013 IL App (1st) 111605, ¶ 22 (quoting 820 ILCS 105/4a(2)(E) (2024)); *see also Nettles v. Allstate Ins. Co.*, 2012 IL App (1st) 102247, ¶ 32; *Robinson v. Tellabs, Inc.*, 391 Ill. App. 3d 60, 65 (1st Dist. 2009).

Likewise, the appellate court has considered federal authority when the relevant statutory or regulatory provisions are materially identical. In *Kerbes v. Raceway Assocs., LLC*, 2011 IL App (1st) 110318, for instance, the appellate court "consider[ed]" federal caselaw regarding the term "designed to evade" in 29 C.F.R. § 778.105 when determining whether an employer restructured an employee's workweek to evade the IMWL's overtime provisions, because the identical term appeared in 56 Ill. Admin. Code § 210.400(b), *id.* at ¶¶ 25-32. Similarly, when considering the legality of an overtime compensation plan for a salaried employee with a fluctuating workweek, the appellate court applied federal standards because the applicable state regulation "precisely parallel[led]" the corresponding federal regulations. *Haynes v. Tru-Green Corp.*, 154 Ill. App. 3d 967, 977 (4th Dist. 1987); *compare* 56 Ill. Admin. Code

§ 210.430(f) *with* 29 C.F.R. § 778.114(a)(5). Importantly, however, the appellate court relied on the FLSA for interpretive guidance in applying the IMWL because of the textual parallels between the two regulations; it did not simply assume that state law and federal law were the same.

B. Congress has excluded "preliminary" and "postliminary" activities from coverage under the FLSA, but many States have not.

Like Illinois, most other States have wage laws and regulations that parallel federal law in certain ways but diverge in others. This case concerns one specific area in which many States have chosen to diverge from the federal rule: the range of work activities for which an employer must compensate an employee. By enacting the PPA, Congress removed "preliminary" and "postliminary" job activities from the range of compensable work, but many States, including Illinois, *see infra* pp. 15-22, have not followed its lead.

In deciding whether the IMWL incorporates the PPA's preliminary- and postliminary-activity exception, this Court does not write on a blank state. Other state supreme courts have addressed the same question with respect to their own States' wage laws and regulations, and they generally have held that legislative silence with respect to the PPA's preliminary- and postliminary-activity exception without any other clear indication the state legislature intended to incorporate it evinced an intent *not* to incorporate it.

The FLSA requires an employer to pay an hourly minimum wage and an overtime premium for each hour worked over 40 in a "workweek," *see* 29

U.S.C. §§ 206-07, but does not define "workweek," *see id.* § 203. Shortly after the FLSA's enactment, in *Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680 (1946), the United States Supreme Court adopted a broad reading of that term, defining it to mean "all time during which an employee is necessarily required to be on the employer's premises, on duty[,] or at a prescribed workplace," *id.* at 690-91. Thus, it held, a pottery factory had to compensate its workers for time they spent walking across the expansive factory floor from their punch clocks to their work benches. *Id.* at 691-92.

The next year, Congress — reacting to what it perceived as *Anderson*'s "harsh results" and "threatened impact on business" — passed the PPA. *Unexcelled Chem. Corp. v. United States*, 345 U.S. 59, 61 (1953). Though the PPA did not "purport to change" *Anderson*'s definition of "workweek," it narrowed the FLSA's coverage by "excepting two activities" that *Anderson* had "treated as compensable." *IBP, Inc. v. Alvarez*, 546 U.S. 21, 27-28 (2005). The PPA generally provides that "no employer shall be subject to any liability" under the FLSA for failing to pay minimum wages or overtime compensation based on an employee's time spent (1) "walking, riding, or traveling to and from the actual place of performance of the principal activity or activities which such employee is employed to perform" or (2) engaged in activities "preliminary to or postliminary to" such principal activities occurring "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

[they] cease[ ]," such activities. 29 U.S.C. § 254(a). The United States Supreme Court has interpreted the term "principal activity or activities" to mean activities "integral and indispensable" to those for which the employee is employed. *Steiner v. Mitchell*, 350 U.S. 247, 256 (1956); *see also Integrity Staffing Sols. v. Busk*, 574 U.S. 27, 35 (2014) (pre- and post-shift "security screenings" not compensable under PPA's exclusions).

States, for their part, have made different decisions about whether to incorporate the PPA's preliminary- and postliminary-activity exception. Some have incorporated the exception by reference or enacted parallel exceptions by statute or by regulation. *See, e.g.*, Ark. Code Ann. § 11-4-221(a)(2)(A) (2025); Mo. Rev. Stat. § 290.505(4) (2024); Ohio Rev. Code Ann. § 4111.031(A)(1)(b) (2025); Or. Admin. R. 839-020-0043(1) (2025); *Buero v. Amazon.com Servs., Inc.*, 521 P.3d 471, 479 (Or. 2022) (explaining that "[j]ust as the original FLSA was modified by the [PPA]," Oregon's wage regulation defining "hours worked" was modified by subsequent regulation regarding "preparatory and concluding activities").

But many state legislatures have made the opposite judgment, declining to expressly incorporate the PPA's preliminary- and postliminary-activity exception into their wage-and-hour laws. In these States, when confronted with the question, state courts have all but uniformly declined to read their equivalent state statutes to *impliedly* incorporate the exception. *See, e.g.*, *Amaya v. DGS Constr., LLC*, 278 A.3d 1216, 1240 (Md. 2022) ("declin[ing] to

read" legislative "silence on such a significant matter" as "intent to incorporate the PPA into Maryland law"); *Roberts v. State*, 512 P.3d 1007, 1014 (Ariz. 2022) (rejecting argument that Arizona's wage statute "implicitly" incorporated PPA); *Heimbach v. Amazon.com, Inc.*, 255 A.3d 191, 202 (Pa. 2021) (declining to "judicially engraft" PPA onto Pennsylvania's wage statute); *Frlekin v. Apple Inc.*, 457 P.3d 526, 534 n.4 (Cal. 2020) (finding *Busk* "neither dispositive or persuasive" regarding claim under California wage law because *Busk* was based on PPA, which "differ[ed] substantially from the state scheme") (cleaned up); *Segura v. J.W. Drilling, Inc.*, 355 P.3d 845, 848 (N.M. Ct. App. 2015) (reversing trial court for "rel[ying] on federal law interpreting the [PPA]," whose "exclusions" were "completely absent from" New Mexico's wage statute); *see also Hughes v. UPS Supply Chain Sols., Inc.*, 677 S.W.3d 273, 283 (Ky. 2023) (4-3 decision) (Thompson, J., dissenting) (criticizing majority for "engrafting" PPA onto Kentucky's wage statute).

At bottom, although Congress concluded decades ago that employers need not compensate their employees for activities spent on premises that are "preliminary" and "postliminary" to their principal job duties, many States did not expressly incorporate the same exemption into their own wage-and-hour laws. That policy judgment, too, is entitled to respect, as many state courts have concluded in rejecting employers' requests to read state wage-and-hour laws to impliedly incorporate the exemption.

C. The IMWL does not incorporate the PPA's preliminary- and postliminary-activity exception.

Illinois, like the States described above, has elected not to incorporate the PPA's preliminary- and postliminary-activity exception into its own wage-and-hour statutes. The IMWL does not expressly incorporate this exception, there is no evidence that the General Assembly meant to impliedly incorporate it, and the Department has promulgated regulations — the legality of which Amazon has not challenged — that cannot be reconciled with it. The Court should thus reject Amazon's argument that the IMWL should be read to incorporate the PPA, and it should answer the certified question in the negative.

As this Court explained in *Mercado*, the "primary rule of statutory construction" is to ascertain and effectuate the General Assembly's intent, the best indication of which is the "language in the statute, which must be given its plain and ordinary meaning." 2025 IL 129526, ¶ 20. Illinois courts do not "depart from the plain statutory language by reading into it exceptions, limitations, or conditions that conflict with the clear legislative intent," nor do they "resort to extrinsic interpretive aids" where the "statutory language is clear and unambiguous." *Id.* "[A]dministrative rules and regulations, which have the force and effect of law," are interpreted under the same principles. *Id.* Applying those principles here makes clear that the IMWL does not incorporate the PPA's preliminary- and postliminary-activity exception.

Fundamentally, there is no textual support for such a conclusion. The relevant IMWL provisions require an employer to pay an employee an hourly minimum wage and to pay an overtime premium for each hour worked above 40 in a given workweek. 820 ILCS 105/4(a)(1), 4a(1) (2024). The Department has clarified by regulation that "hours worked" means all time "an employee is required to be on duty, or on the employer's premises, or at other prescribed places of work" — tracking nearly verbatim the definition of "workweek" set forth in *Anderson*, *see supra* p. 12 — plus "any additional time the employee is required or permitted to work for the employer." 56 Ill. Admin Code § 200.110. Thus, according to the IMWL's plain text, as clarified by the Department's regulation, Illinois employers must compensate their employees for *precisely* the kinds of preliminary and postliminary activities that Congress subsequently exempted at the federal level by passing the PPA. *See* 29 U.S.C. § 254(a)(2); McCormick *et al.*, *supra*, § 4:1 (describing PPA as a "reaction" to *Anderson* and other FLSA precedents).

But unlike the federal government, Illinois has created no express exception for these activities. Neither the IMWL nor the Department's regulations reference the PPA's exception for preliminary or postliminary activities. *See generally* 820 ILCS 105/1 *et seq.* (2024); 56 Ill. Admin. Code §§ 210.100-1050; *cf.* Mo. Rev. Stat. § 290.505(4) (2024) (section "shall be interpreted in accordance with . . . the Portal to Portal Act"). Nor do they contain any provision mirroring the content of that exception. *Cf.* Ark. Code

Ann. § 11-4-221(a)(2)(A) (2025) (employer "not subject to liability" for failing to pay minimum wage or overtime premium for activity "preliminary to or postliminary to the principal activity"). And they do not contain any provision with substantially similar phrasing. *Cf.* Or. Admin. R. 839-020-0043(1) (2025) ("[p]reparatory and concluding activities" are "hours worked" if "an integral and indispensable part of a principal activity"). To the contrary, as in the States cited above, *supra* pp. 13-14, Illinois "has never statutorily adopted the [PPA's] specific classification of certain employee activities as being exempt from compensation," *Heimbach*, 255 A.3d at 201 (Pennsylvania's wage-and-hour statute, which tracked *Anderson*'s definition of workweek, did not incorporate PPA's preliminary- and postliminary-activity exception); *see also Amaya*, 278 A.3d at 1239 (same as to Maryland's wage-and-hour statute).

Nor are there any other indications that the General Assembly intended to silently incorporate the PPA. The General Assembly passed the IMWL in 1971, decades after Congress passed the FLSA *and* the PPA's amendments to it. *See Amaya*, 278 A.3d at 1242 (noting PPA was passed nearly 20 years before Maryland's state minimum wage law was, yet legislature "did not mention the PPA"). The legislature knows how to incorporate FLSA provisions and does so explicitly when it wants to. *See, e.g.*, 820 ILCS 105/4a(2)(E) (2024) (exception for certain "bona fide executive, administrative[,] or professional" employees); *see also Amaya*, 278 A.3d at 1241 (explaining Maryland legislature knew how to evince intent to

incorporate federal law but did not as to PPA). If the General Assembly intended to incorporate the PPA's preliminary- and postliminary-activity exception here, it would have done so clearly, as other States have. *See, e.g.*, Ark. Code Ann. § 11-4-221(a)(2)(A) (2025); Mo. Rev. Stat. § 290.505(4) (2024); Ohio Rev. Code Ann. § 4111.031(A)(1)(b) (2025); Or. Admin. R. 839-020-0043(1) (2025). By the same token, nothing will prevent the General Assembly from amending the IMWL to include this exception if it ever chooses to do so.

Other interpretive principles yield the same conclusion. For instance, this Court has explained that the "enumeration of an exception in a statute" implies the "exclusion of all other exceptions." *Schultz v. Performance Lighting, Inc.*, 2013 IL 115738, ¶ 17; *see Mercado*, 2025 IL 129526, ¶ 32 (similar principle with respect to IMWL's implementing regulations). And here, the General Assembly *has* established certain exceptions to the IMWL. *See, e.g.*, 820 ILCS 105/4a(2) (2024) (exempting certain mechanics, farmers, executives, and other types of employees from IMWL's overtime provisions). Its choice not to exempt "preliminary" and "postliminary" activities should thus be understood as a deliberate one. As this Court has explained, "legislative inaction is itself a choice," *People ex rel. Nabstedt v. Barger*, 3 Ill. 2d 511, 516 (1954), and here the General Assembly's inaction should be heeded rather than discarded.

Reading the IMWL to impliedly incorporate the preliminary- and postliminary-activity exception would be especially misguided given the statute's broad remedial purpose of protecting Illinois workers. *See* 820 ILCS 105/2 (2024). And doing so with the goal of making the IMWL more resemble the FLSA would make no sense because the IMWL is not meant to be "'identical to the FLSA.'" *Soucek v. Breath of Life Pro. Servs., NFP*, 2021 IL App (1st) 210413, ¶ 68 (quoting *Samano*, 2020 IL App (1st) 190699, ¶ 62); *see Amaya*, 278 A.3d at 1245 ("The FLSA is a floor, not a ceiling.") (cleaned up). The FLSA's savings clause permits state laws to be more protective, 29 U.S.C. § 218(a), and the Department's regulations state that the stricter law prevails, 56 Ill. Admin. Code § 210.100. Reading the IMWL to track federal law absent any indication that the General Assembly intended to do so — and in the face of the Department's regulation, which adopts the very standard that Congress intended to override in passing the PPA — would thus undermine the General Assembly's expressed purpose in passing the IMWL and the Department's goal in interpreting it.

Indeed, other Department regulations confirm that the IMWL does not exempt employers from compensating employees from those activities "preliminary to" and "postliminary to" their principal activities. As discussed, *supra* p. 16, the Department has promulgated a regulation defining "hours worked" in the very same manner as the United States Supreme Court did in *Anderson*, a definition that Congress intentionally overrode in enacting the

PPA. And though the Department may "refer to" the FLSA regulations for "guidance in the interpretation of" the IMWL, 56 Ill. Admin. Code § 210.120, it has never issued a regulation limiting the IMWL the way that the PPA has limited the FLSA, *see Andrews v. Kowa Printing Corp.*, 217 Ill. 2d 101, 115 (2005) (rejecting employer's reliance on FLSA's regulations because Department's regulations lacked analogous provisions); *cf. Buero*, 521 P.3d at 479 (Oregon replicated PPA's amendment of FLSA at state regulatory level).

Further, the Department's "hours worked" regulation *does* incorporate the federal regulations implementing 29 U.S.C. § 254(a)(1) — which governs when an employer is required to compensate an employee for certain travel time — but does *not* incorporate the equivalent regulations implementing 29 U.S.C. § 254(a)(2), the preliminary- and postliminary-activity exception. *See* 56 Ill. Admin. Code § 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 . . . ."); *cf.* 29 C.F.R. §§ 785.9, 785.24-26, 785.50 (regulations implementing 29 U.S.C. § 254(a)(2)). Again, the Court should read that omission as deliberate, and honor it by declining to read the regulations to incorporate an exemption not supported by their text or any other indicator of meaning. *Cf. Mercado*, 2025 IL 129526, ¶ 21 (courts give "substantial weight and deference" to an agency's "interpretation of its regulations and enabling statute").

It is irrelevant that neither the General Assembly nor the Department has expressly stated that Illinois law does *not* exempt activities that are preliminary or postliminary to a worker's principal activities from coverage. *See Amaya*, 278 A.3d at 1243 (rejecting argument that legislature must "expressly disavow the adoption or incorporation" of PPA or else be "deemed to have incorporated" it). Although Amazon argued at the Seventh Circuit that the IMWL should be interpreted in lockstep with the FLSA absent a "compelling justification" to depart from it, *Johnson* AE Br. 17, that is not correct: Courts may draw on similar provisions of the FLSA or its regulations (or caselaw interpreting them) where the relevant provisions are materially identical or state law references federal law. *Supra* pp. 6-11. By contrast, recognizing the "default rule" that Amazon pressed at the Seventh Circuit, in which state law parallels federal law absent a "compelling" reason to the contrary, *Johnson* AE Br. 17, 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 Department have conferred on them. Such a "default rule" also would contravene Congress's intent to preserve the States' role in setting wage-and-hour policy according to local attitudes and needs, *see* 29 U.S.C. § 218(a) (FLSA's savings clause), which they had held since long before the FLSA was enacted, *see* McCormick *et al.*, *supra*, § 4:1.

Finally, to the extent the court finds either the IMWL itself or the Department's regulations interpreting the IMWL ambiguous, it should defer to the Department's interpretation of each. Even on *de novo* review, "an agency's interpretation of its regulations and enabling statute are entitled to substantial weight and deference, given that agencies make informed judgments on the issues based on their experience and expertise as serve as an informed source for ascertaining the legislature's intent." *Mercado*, 2025 IL 129526, ¶ 21 (cleaned up). At minimum, the Department's interpretations reasonably "harmonize[ ] with the [IMWL's] purpose," *see Medponics Ill., LLC v. Dep't of Agric.*, 2021 IL 125443, ¶ 58, namely the protection of Illinois workers. Accordingly, those interpretations warrant deference.

In sum, the IMWL's text, legislative context, purpose, and implementing regulations all point in the same direction: The IMWL does not incorporate the federal exception for preliminary and postliminary activities. This Court should accordingly answer the certified question in the negative.

CONCLUSION

For these reasons, this Court should answer the certified question in the negative.

Respectfully submitted,

KWAME RAOUL
Attorney General
State of Illinois

JANE ELINOR NOTZ
Solicitor General

115 South LaSalle Street
Chicago, Illinois 60603
(312) 814-3000

Attorneys for *Amici Curiae*
Illinois Attorney General and
Illinois Department of Labor

ALEX HEMMER
Deputy Solicitor General
MATTHEW J. FREILICH
Assistant Attorney General
115 South LaSalle Street
Chicago, Illinois 60603
(312) 814-5526
CivilAppeals@ilag.gov (primary)
Alex.Hemmer@ilag.gov (secondary)

September 19, 2025

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 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, is 23 pages.

/s/ Alex Hemmer
ALEX HEMMER
Deputy Solicitor General
115 South LaSalle Street
Chicago, Illinois 60603
(312) 814-5526
CivilAppeals@ilag.gov (primary)
Alex.Hemmer@ilag.gov (secondary)

CERTIFICATE OF FILING AND SERVICE

I certify that on September 19, 2025, I electronically filed the foregoing Brief of *Amici Curiae* Illinois Attorney General and Illinois Department of Labor in Support of Plaintiffs-Appellants with the Clerk of the Court for the Supreme Court of Illinois by using the Odyssey eFileIL system.

I further certify that the following participants in this appeal, named below, are registered service contacts on the Odyssey eFileIL system and thus will be served via the Odyssey eFileIL system.

Counsel for Plaintiffs-Appellants
Douglas M. Werman (dwerman@flsalaw.com)
Maureen A. Salas (msalas@flsalaw.com)
John J. Frawley (jfrawley@flsalaw.com)

Counsel for Defendant-Appellee
Michael E. Kenneally (michael.kenneally@morganlewis.com)
Kevin F. Gaffney (kevin.gaffney@morganlewis.com)
Sari M. Alamuddin (sari.alamuddin@morganlewis.com)

Under penalties as provided by law pursuant to section 1-109 of the Illinois Code of Civil Procedure, I certify that the statements set forth in this instrument are true and correct to the best of my knowledge, information, and belief.

/s/ Alex Hemmer
ALEX HEMMER
Deputy Solicitor General
115 South LaSalle Street
Chicago, Illinois 60603
(312) 814-5526
CivilAppeals@ilag.gov (primary)
Alex.Hemmer@ilag.gov (secondary)