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

OPENING BRIEF OF PLAINTIFFS-APPELLANTS

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POINTS AND AUTHORITIES

NATURE OF THE ACTION

This case is before the Court on a certified question from the U.S. Court of Appeals for the Seventh Circuit.[1] The question is whether the Illinois Minimum Wage Law ("IMWL") incorporates the compensability exclusions of the federal Portal-to-Portal Act ("PPA"). If the IMWL incorporates those exclusions, then Illinois employees are not entitled to be paid for all the hours that they work. Fortunately for Illinois employees, the IMWL does not incorporate the PPA, and it does not limit Illinois workers' right to be paid for all activities their employers require them to perform. This is clear from the IMWL's plain text, implementing regulations, and legislative history.

First, per its plain text, the IMWL does not incorporate the PPA. Under the at-issue PPA provision: employers need not compensate workers for time spent on activities "preliminary" or "postliminary" to "principal" work activities. 29 U.S.C. § 254(a)(2). The IMWL contains no language remotely resembling that provision. Nor does the IMWL mention, cite, or allude to the PPA in any way. This resolves the issue before the Court. One law cannot

[1] Illinois Supreme Court Rule 341(h)(2) requires appellants to state, in the introductions to their opening briefs, "the judgment appealed from and whether the judgment is based upon the verdict of a jury," as well as "whether any question is raised on the pleadings." Ill. Sup. Ct. R. 341(h)(2). Because this matter is before the Court on a certified question, Plaintiffs-Appellants are not appealing to this Court directly from any judgment. There also has been no jury verdict in this case. Finally, because the only issue before the Court is a certified question of law, no question is raised on the pleadings.

adopt another through silence, as this Court has repeatedly—and recently—recognized. So the IMWL, as written, does not incorporate the PPA.

Beyond the IMWL's silence as to the PPA, other textual evidence shows the IMWL rejects the PPA. The IMWL expressly incorporates *some* parts of the Fair Labor Standards Act ("FLSA")—the federal law in which the PPA sits. By adopting some of the FLSA and leaving out the PPA, the IMWL shows a clear intent to avoid the PPA. This is indisputable based on canons of statutory construction that this Court consistently applies. It should uphold those canons now and find that the IMWL eschews the PPA.

Second, the IMWL's regulations prove the IMWL does not incorporate the PPA. Those regulations require employers to *provide* pay for "*all* the time an employee is required to be . . . on the employer's premises." Ill. Admin. Code tit. 56, § 210.110 (emphasis added). Conversely, the PPA lets employers *withhold* pay for *some* of the time an employee is required to be on the employer's premises (by making on-site time spent on "preliminary" or "postliminary" activities non-compensable). 29 U.S.C. § 254(a)(2). That is a direct conflict. And it is dispositive. IMWL regulations have the force and effect of law—they are part of the IMWL, just like its statutory provisions. Thus, through its regulations, the IMWL rejects the PPA.

Even if the IMWL's regulations did not have the force and effect of law, the regulations would remain strong evidence that the IMWL rejects the PPA. This Court defers to agencies' interpretations of statutes that the agencies are

charged with administering. Illinois law charges the Illinois Department of Labor ("IDOL") with administering the IMWL. And the IDOL has interpreted the IMWL to reject the PPA, as its above-listed regulation shows. At minimum, the Court should defer to that reasonable interpretation.

Third, the IMWL's history demonstrates that the Illinois legislature never intended for the IMWL to incorporate the PPA. Illinois enacted the IMWL in 1971, twenty-four years after Congress enacted the PPA, and the legislature amended the statute a number of times in subsequent years to explicitly incorporate specific FLSA provisions. A22–26, 31–35, 44–49, 61–68. Clearly, the legislature knows how to adopt FLSA provisions into the IMWL when it so desires. Yet the Illinois legislature never wrote the FLSA provision at issue in this suit—the PPA—into the IMWL. There is only one conclusion to draw: the Illinois legislature chose to reject the PPA. This Court should respect the legislature's choice and find that the IMWL does not incorporate the PPA.

STATEMENT ON ISSUES PRESENTED FOR REVIEW

Whether the IMWL incorporates the PPA's provision that excludes, from compensability, employee activities that are preliminary or postliminary to principal activities.

STATEMENT OF JURISDICTION

This Court has jurisdiction over this matter under Illinois Supreme Court Rule 20(a). Rule 20(a) authorizes this Court to answer questions of

Illinois law certified to it by the Seventh Circuit. Ill. Sup. Ct. R. 20(a); *DeGrand v. Motors Ins. Corp.*, 146 Ill. 2d 521, 522, 588 N.E.2d 1074, 1075 (1992). On July 8, 2025, the Seventh Circuit certified, to this Court, the question of whether the IMWL incorporates 29 U.S.C. § 254(a)(2) of the PPA. A126. On July 11, 2025, this Court accepted the certified question. A127–129.

STATUTES AND REGULATIONS INVOLVED

The provision of the IMWL under which Plaintiffs[2] brought the action underlying this appeal states: "[n]o employer shall employ any of his employees for a workweek of more than 40 hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than 1 1/2 times the regular rate at which he is employed." 820 ILCS § 105/4a. The full text of the IMWL is in the Appendix. A130–36.[3]

A regulatory provision implementing the IMWL defines the term "Hours worked" as "all the time an employee is required to be on duty, or on the employer's premises, or at other prescribed places of work, and any additional time the employee is required or permitted to work for the employer." 56 Ill. Admin. Code 210.110. The full text of this regulation is in the Appendix. A69–71.

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[2] In compliance with Illinois Supreme Court Rule 341(f), this brief refers to Plaintiffs-Appellants Lisa Johnson and Gale Miller Anderson as "Plaintiffs" and refers to Defendant-Appellee Amazon.com Services LLC as "Amazon."

[3] Citations to "A__" are to the Appendix to this brief.

The portion of the PPA pertinent to this appeal states: "no 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 any of the following[:] . . . activities which are preliminary to or postliminary to . . . [the employee's] principal activity or activities." 29 U.S.C. § 254(a)(2). The full text of the PPA is in the Appendix. A15–21.

STATEMENT OF FACTS

A. Background

Amazon owns fulfillment and distribution centers across the country. *See* A76. The centers are large warehouses at which Amazon stores packages that it eventually delivers to customers. *Id.* The warehouses generally operate 24 hours per day, and they require significant staff to maintain. *Id.* In its Illinois warehouses alone, Amazon employs over 20,000 workers. A76–77.

Plaintiffs Lisa Johnson and Gale Miller Anderson previously worked for Amazon in its Illinois warehouses. *See* A77. Both of them were hourly, non-exempt employees whose duties included moving, stacking, and loading packages. *Id.* Ms. Johnson worked for Amazon from January 2019 to May 2021. *Id.* Ms. Miller Anderson worked for Amazon from October 2017 to October 2021. *Id.*

Accordingly, Plaintiffs each worked for Amazon, in Illinois, when the COVID-19 pandemic began. *See* A76–77. During the pandemic, over 100

million Americans contracted COVID-19, and over one million Americans perished. A76. This included over four million infections and 40,000 deaths in Illinois. *Id.*

Amazon implemented new policies for its warehouse workers at the outset of the pandemic. *Id.* It required all hourly, non-exempt employees to undergo COVID-19 "screenings" at the start of each shift. *Id.* The screenings were physical and medical examinations intended to identify workers with COVID-19 symptoms. *Id.* Amazon conducted them on-site, at the warehouses. *Id.* Yet, even though employees had to arrive at work early for the screenings, Amazon did not compensate them for the time they spent on the screenings. *Id.*

B. Proceedings Below

As a result, Ms. Johnson filed this action against Amazon in the Circuit Court of Cook County, and Amazon then removed it to the Northern District of Illinois on February 3, 2023. A2. Ms. Johnson later filed an amended complaint, which added Ms. Miller Anderson as a named plaintiff. A72. Plaintiffs' suit alleged that Amazon's failure to compensate Illinois employees for time spent on COVID-19 screenings violated the IMWL and the Illinois Wage Payment and Collection Act, as well as the FLSA and the principles of quantum meruit. *See* A90–95. Plaintiffs sought to represent a class of Amazon's similarly situated, current and former Illinois employees. A85–90.

Amazon moved to dismiss all claims in the amended complaint on March 21, 2023. A4. The district court granted the motion in its entirety on December 7, 2023. A97. It then entered a judgment on January 4, 2024. A105.

The district court's decision to dismiss Plaintiffs' FLSA claims relied on the federal PPA. *See* A99–102. Section 4(a) of the PPA "amended the FLSA" such that employers are "not liable" for "activities which are preliminary to or postliminary to" an employee's "principal activity or activities." *Chagoya v. City of Chicago*, 992 F.3d 607, 617 (7th Cir. 2021) (citing 29 U.S.C. § 254(a)(2)). Put differently: "the FLSA, as amended, applies only to [an] employee's 'principal activity.'"[4] *Id.* at 618. Principal activities, themselves, are duties a worker "is employed to perform" and any activities "integral and indispensable" to those duties. *Id.*; 29 U.S.C. § 254(a)(2). The district court found Plaintiffs' "principal activities" were "moving boxes, stacking packages, and loading boxes." *See* A100. It held a "COVID screening is neither integral nor indispensable to that work" under the PPA, meaning the PPA bars Plaintiffs' FLSA claims. *Id.*

The district court then applied the same reasoning—relying on the federal PPA—to Plaintiffs' state-law IMWL claims. *See* A102. It said courts frequently "look to the Fair Labor Standards Act for guidance in interpreting the [IMWL]." *Id.* (quoting *Mitchell v. JCG Indust., Inc.*, 745 F.3d 837, 845 (7th

[4] This general rule has exceptions outlined in 29 U.S.C. § 254(b).

Cir. 2014)). So, it dismissed Plaintiffs' IMWL claims under the PPA's "integral and indispensable" framework. *Id.*

Plaintiffs appealed the district court's dismissal of their IMWL claims because the district court's decision rested on the incorrect assumption that the IMWL adopts the PPA. A110. They also moved the Seventh Circuit to certify the question of whether the IMWL incorporates the PPA's provision regarding "preliminary" and "postliminary" activities to the Illinois Supreme Court. *See* A126. On July 8, 2025, the Seventh Circuit certified that question to this Court. *Id.* And on July 11, 2025, this Court accepted the certified question. A127–129.

ARGUMENT

The IMWL does not incorporate the PPA provision codified in 29 U.S.C. § 254(a)(2). The IMWL's plain text, implementing regulations, and legislative history permit no other conclusion.

I. The IMWL's plain text shows that the IMWL does not incorporate the PPA.

The plain text of the IMWL demonstrates that it does not incorporate the PPA. The PPA is part of the FLSA, which explicitly permits states to implement wage laws different from the FLSA (and the PPA). Illinois has exercised that right. The IMWL is silent as to the PPA, and one statute cannot incorporate another through silence. Plus, the IMWL expressly incorporates

non-PPA provisions of the FLSA. This means the IMWL eschews the PPA under well-established canons of statutory construction.

A. The PPA limits the application of the FLSA and does not limit the IMWL.

For context: the PPA is a federal law that places no limits on the IMWL. Congress passed the wage law in which the PPA sits—the FLSA—in 1938. *IBP, Inc. v. Alvarez,* 546 U.S. 21, 25 (2005). The FLSA requires employers to pay covered employees a minimum wage for each hour they work and an overtime rate for the time they work over forty hours per week. *Id.* Following the FLSA's passage, the U.S. Supreme Court held that the hours in a workweek include "all time during which an employee is necessarily required to be on the employer's premises, on duty or at a prescribed workplace." *Anderson v. Mt. Clemens Pottery Co.,* 328 U.S. 680, 690–91 (1946).

Nine years after it enacted the FLSA, Congress took measures to limit employer liability under the FLSA through passage of the PPA. One of those measures, which is the subject of this appeal, provides that employers are not liable to pay employees for the time they spend performing activities which are "preliminary" or "postliminary" to their "principal" work activities, which occur prior to the time they start or after they cease performing their principal activities. 29 U.S.C. § 254(a).

The PPA did not alter the U.S. Supreme Court's definition of "workweek," and that definition remains valid today. *IBP, Inc.,* 546 U.S. at 28

("[T]he 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.'"); *see* 29 C.F.R. § 785.7.[5] As discussed: the PPA only created limited compensability exceptions for preliminary and postliminary activities. *Id.* Under the continuous workday doctrine, all activities performed between the employee's first and last principal activity is compensable regardless of the activity performed. *IBP, Inc.,* 546 U.S. at 37.

Notably, the § 254(a) exception is just one of many amendments Congress made to the FLSA via the PPA. The PPA also amended the FLSA to: (1) abolish representative actions in favor of collective actions that require a party plaintiff to file a written consent to join the action, 29 U.S.C § 256; (2) create a two year limitations period for FLSA actions, which was later extended to three years for willful violations, *id.* § 255; (3) create a defense that allows employers to escape liability if they rely on a written administrative regulation or order, *id.* § 259(a); and (4) create a defense to the imposition of liquidated damages, *id.* § 260. A15–21.

The FLSA and the PPA permit states like Illinois to implement wage standards that differ from federal wage standards. Indeed, the "FLSA contains

[5] 29 C.F.R. § 785.7 reads: "The workweek ordinarily includes 'all time during which an employee is necessarily required to be on the employer's premises, on duty or at a prescribed work place.' The Portal-to-Portal Act did not change the rule except to provide an exception for preliminary and postliminary activities."

a savings clause that *expressly* provides that nothing in the statute excuses an employer's noncompliance with 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) (emphasis added); 29 U.S.C. § 218(a). And, while acknowledging that the PPA amendments would limit employers' liability under the FLSA, the Congressional sponsors of the PPA declared that states would be free to enact laws that provided employees with more generous rights. 29 C.F.R. § 790.2(a) n.8; s*ee also* 93 Cong. Rec. 2098.[6] The IDOL likewise recognizes that state and federal wage law may differ. *See* Ill. Admin. Code tit. 56, § 210.100. In sum: the PPA is part of a federal wage scheme that gives states the right to enact wage laws dissimilar from federal law.

B. The IMWL is silent as to the PPA and one law cannot incorporate another through silence.

The text of the IMWL shows Illinois has exercised that right: the IMWL is completely silent as to the PPA, meaning it does not incorporate the PPA. When interpreting a statute, courts' "primary goal is to ascertain and give effect to the intention of the legislature." *Moore v. Chicago Park Dist.*, 2012 IL 112788, ¶ 9, 978 N.E.2d 1050, 1054 (2012). They "seek that intent first from

[6] Sen. Ferguson: "I should like to add for the record of today that this bill would not strike at the heart of or defeat any cause of action that arose out of a State statute." 93 Cong. Rec. 2098. Sen. Donnell: "That is correct. The Federal Government has absolutely no power, as I see it, to cancel a right existing under State statute. At any rate, we do not undertake to assert any such power." *Id.*

the plain language used in the statute." *Id.* And they "may not annex new provisions" which "the legislature did not express" to that language. *Hines v. Dep't of Pub. Aid*, 221 Ill. 2d 222, 230, 850 N.E.2d 148, 153 (2006). Therefore, if one statute is silent as to another, courts will not assume the former incorporates the latter. *People v. Clark*, 2019 IL 122891, ¶ 24, 135 N.E.3d 21, 28 (2019); *Moore*, 2012 IL 112788, ¶ 13; *King v. First Cap. Fin. Servs. Corp.*, 215 Ill. 2d 1, 27, 828 N.E.2d 1155, 1170 (2005); *Lora v. United States*, 599 U.S. 453, 459 (2023). The IMWL is silent as to the PPA, 820 ILCS § 105/1 *et seq.*, so it does not incorporate the PPA.

Several recent decisions from this Court support that conclusion. *Moore* is one of them. There, the estate of Sylvia Moore alleged the Chicago Park District caused Ms. Moore's slip-and-fall death by "negligently and carelessly shovel[ing] and plow[ing] snow into mounds" in its parking lot. 2012 IL 112788, ¶ 4. The district argued Section 3-106 of Illinois' Tort Immunity Act ("TIA") barred the estate's claims. *Id.* (citing 755 ILCS § 5/27-6). On a certified question, this Court had to determine whether Section 3-106 of the TIA incorporates the "natural accumulation rule" codified in another TIA section. *Id.* ¶¶ 12–13. Section 3-106 does not mention the natural accumulation rule. *Id.* So, "based on the plain text of the statute," the Court held that "section 3-106 does not incorporate the natural accumulation rule." *Id.* ¶ 13. Here too, one law (the IMWL) cannot incorporate another law (the PPA) by remaining silent as to it.

Clark also shows that silence is not incorporation. *Clark* concerned Section 31-6(a) of the Illinois Criminal Code. 2019 IL 122891, ¶¶ 9, 21. That section "is divided into two independent clauses," and violation of either clause constitutes the crime of "escape." *Id.* The first clause makes it a crime to escape "from custody" of a penal institution. *Id.* ¶ 21 (quoting 720 ILCS 5/31-6). The second clause makes it a crime to "fail[] to report to a penal institution" when required. *Id.* "The issue presented in [*Clark* was] whether the State is required to show that a convicted felon was in 'custody' in order to prove that he or she violated the failure to report provision in the second clause." *Id.* ¶ 17.

The Court held in the negative. It explained that the "plain and unambiguous language" of the second clause did "not contain a 'custody' element." *Id.* ¶ 24. And because courts *cannot* "depart from a statute's plain language by reading into it exceptions, limitations, or conditions that the legislature did not express," the Court *would not* "engraft the custody element of the escape from custody provision onto the failure to report provision." *Id.* ¶¶ 23, 24. By the same logic, the Court should not engraft unmentioned and unreferenced PPA requirements into the IMWL.

King is yet another decision, by this Court, demonstrating that silence is not incorporation. *King* held that the Illinois Attorney Act does not create a "private right of action for damages for the unauthorized practice of law." 215 Ill. 2d at 24. It explained that the Attorney Act only lists "a contempt sanction"

as a remedy. *Id.* at 27. And although there are other "remedies provided in other statutes," the Attorney Act "does not provide for any other remedy." *Id.* So, the Court refused to read a damages remedy into the Attorney Act, given that if "the legislature [had] intended to provide a cause of action for damages . . . it could have easily done so," and given that "a court may not . . . add exceptions, limitations, or conditions . . . [to a] law so as to depart from the plain meaning of [its] language." *Id.* at 26, 27. Bottom line: *Moore*, *Clark*, and *King* show this Court does not import external standards into laws silent as to those standards.

Plus, this Court is not alone in refusing to equate silence with incorporation—the U.S. Supreme Court follows the same principle. In *Lora*, the Court examined 18 U.S.C. § 924, which contains penalties for firearm offenses. 599 U.S. at 456. It held § 924(j) does not "incorporate[]" § 924(c)'s penalties. *Id.* at 459. The Court's rationale was simple: "Subsection (j) nowhere mentions . . . subsection (c)'s penalties." *Id.* The IMWL nowhere mentions the PPA, so it does not adopt the PPA.

Notably, the IMWL is not only silent as to the PPA—it is completely devoid of any provision remotely resembling it. As discussed, the PPA amends the FLSA such that employers need only compensate employees for their "principal activities." *Johnson*, 142 F.4th at 938. It excludes, from compensability, "activities which are preliminary to or postliminary to said principal activity or activities." 29 U.S.C. § 254(a)(2). These concepts—

"principal," "preliminary," and "postliminary" activities—are nowhere to be found in the IMWL. 820 ILCS § 105/1 *et seq.* Nor are any similar concepts. *Id.* The IMWL simply does not compartmentalize the types of activities that are, and are not, compensable in the manner outlined by the PPA. *Id.* So there is no reason to import the PPA into the IMWL.

The Seventh Circuit nearly reached the same conclusion before certifying this case to this Court. It highlighted that the "IMWL [does not] have language comparable to the PPA establishing an employees' 'principal activities' as the metric for measuring compensable time." *See Johnson*, 142 F.4th at 940. And it acknowledged this "might suggest that the Illinois General Assembly did not intend to incorporate [the PPA's] limitations in the IMWL." *Id.*

That is exactly what the IMWL's silence as to the PPA suggests. Indeed, multiple federal circuit and state supreme courts have held that state wage laws silent as to the PPA do not incorporate it. *Roberts v. State of Arizona*, 512 P.3d 1007, 1014 (Ariz. 2022) (PPA restrictions do not apply to Arizona wage law); *Amaya v. DGS Construction, LLC*, 278 A.3d 1216, 1240 (Md. 2022) (PPA restrictions do not apply to Maryland wage law); *Heimbach v. Amazon.com, Inc.*, 255 A.3d 191, 201–02 (Pa. 2021) (PPA restrictions do not apply to Pennsylvania minimum wage law); *Frlekin v. Apple Inc.*, 457 P.3d 526, 532–33 (Cal. 2020) (refusing to apply PPA restrictions to California Wage Order 7); *In re: Amazon.Com, Inc. Fulfillment Ctr. Fair Lab. Standards Act & Wage & Hour*

Litig. ("*In re: Amazon*"), 905 F.3d 387, 404 (6th Cir. 2018) (declining to apply PPA provisions to Nevada wage law).

C. The IMWL explicitly adopts non-PPA provisions of the FLSA, meaning its exclusion of the PPA is purposeful.

Beyond the IMWL's silence as to the PPA, other textual evidence shows the IMWL rejects the PPA. Under the maxim of *expressio unius est exclusio alterius*, "the expression of one thing" in a statute implies "the exclusion of another." *Metzger v. DaRosa*, 209 Ill. 2d 30, 44, 805 N.E.2d 1165, 1172 (2004); *People v. Smith*, 2016 IL 119659, ¶ 28, 76 N.E.3d 1251, 1258 (2016).

The IMWL expressly incorporates several non-PPA provisions of the FLSA. For example, after the Illinois General Assembly amended the IMWL to include an overtime provision, it immediately amended the statute again, in 1977, to incorporate the FLSA's overtime exemptions for executive, professional, and administrative employees "as defined by or covered by the [FLSA]." *See* 820 ILCS 105/4a(2)(E); 1976 Ill. Legis. Serv. P.A. 79-1436 (H.B. 3318); 1977 Ill. Legis. Serv. P.A. 79-1523 (H.B. 1930). The General Assembly incorporated these FLSA exemptions after determining that Illinois employers would—absent the exemptions—face significant financial liability. 79th Ill. Gen. Assem., Senate Proceedings, December 16, 1976, at 52–53, 58–59 (Statements of Senators McCarthy, Harris, Hall and Bruce).

The IMWL also adopts other non-PPA FLSA exceptions by specific reference. It contains an exemption for any "commissioned employee as

described in paragraph (i) of Section 7 of the [FLSA]," any "employee of a governmental body" subject to the exclusion in "paragraph (e)(2)(C) of Section 3 of the [FLSA]," and employees "whose union has contractually agreed to an alternate shift schedule as allowed by subsection (b) of Section 7 of the [FLSA]." *Id.* §§ 105/4a(2)(D), 105/4a(2)(F), 105/4a(2)(J). And it also has adopted the FLSA's overtime exceptions for government bodies that provide "compensatory time pursuant to paragraph (o) of Section 7 of the [FLSA]" and employees of government bodies who are "engaged in fire protection or law enforcement activities" and who meet "the requirements of paragraph (k) of Section 7 or paragraph (b)(20) of Section 13 of the [FLSA]." 820 ILCS § 105/4a(4).

Yet the IMWL contains no reference to the FLSA's PPA provisions. 820 ILCS § 105/1 *et seq.* This shows the IMWL's exclusion of the PPA is intentional. *Metzger*, 209 Ill. 2d at 44, 805 N.E.2d at 1172; *Smith*, 2016 IL 119659, ¶ 28, 76 N.E.3d at 1258.

This argument finds support in *Smith*. In *Smith*, this Court evaluated Section 5-4.5-95(b) of the Unified Code of Corrections ("Corrections Code"). 2016 IL 119659, ¶ 11. Section 5-4.5-95(b) permits courts to impose a "Class X" sentence when a defendant, "over the age of 21 years, is convicted of a Class 1 or Class 2 felony, after having twice been convicted" of similar crimes. *Id.* (quoting 730 ILCS § 5/5-4.5-95(b)). *Smith* considered whether Section 5-4.5-

95(b) contains an implicit requirement that defendants be at least 21 when *committing* or being *charged* with a crime. *Id.* ¶ 28.

It does not, per *Smith*. The Court noted that it is "well settled that where the legislature includes particular language in one section of a statute but omits it in another section of the same statute, courts will presume that the legislature acted intentionally in the exclusion or inclusion." *Id.* ¶ 30. Section 5-4.5-95(b) only refers to the age at which a defendant is "convicted" and "makes no reference to the defendant's age at the time the offense is committed or the time that the offense is charged." *Id.* ¶ 28. Yet "in other sentencing provisions under the [Corrections] Code, the legislature . . . specifically provided that a court should consider a defendant's age at an earlier time than conviction." *Id.* ¶ 29. "Therefore, absent an express reference to a defendant's age at a time prior to conviction, it would be inappropriate . . . to infer that the legislature intended section 5-4.5-95(b) to also include a condition that the defendant must have attained the age of 21 at the time he committed the offense or at the time he is charged." *Id.* ¶ 30. For similar reasons, it would be inappropriate to infer the legislature intended the IMWL to include the PPA, given that the IMWL incorporates non-PPA provisions of the FLSA without mentioning the PPA.

The Seventh Circuit has partially acknowledged this. When certifying this case to this Court, it said: "[t]hat the legislature adopted some provisions

of the FLSA, and not others, supports the plaintiffs' position that the omission of the PPA's exclusions was deliberate." *Johnson*, 142 F.4th at 940.

The Sixth Circuit reached a similar conclusion in a very similar case: *In re: Amazon*, 905 F.3d 387 (6th Cir. 2018). There, workers sought compensation under a Nevada wage law "for time spent undergoing or waiting to undergo mandatory onsite security screenings at the Amazon facilities where they worked." *Id.* at 391. The district court held the workers' claims "were barred by Nevada's incorporation of the Portal-to-Portal Act." *Id.* at 394.

The Sixth Circuit disagreed, holding that the Nevada wage law did not incorporate the PPA. *Id.* at 402–04. It noted Nevada law does not "affirmatively" mention the PPA "anywhere." *Id.* at 404. But it "expressly include[s] references" to other provisions of federal law, including other FLSA provisions. *Id.* at 403 (pointing out that "Nevada minimum wage provisions do not apply to '[a] person employed as a trainee for a period not longer than 90 days . . . pursuant to section 6(g) of the Fair Labor Standards Act'"). Per the Sixth Circuit: "[t]hat the Nevada legislature expressly adopted some federal regulations indicates that its failure to adopt others was intentional." *Id.*

The IMWL's plain text demands a similar conclusion here, and a review of that text should end the Court's inquiry. When "statutory language is plain, ordinary and unambiguous, [this Court is] bound to enforce the law as written and may not resort to other tools of statutory construction." *Stinson v. Chicago*

Bd. of Election Comm'rs, 407 Ill. App. 3d 874, 876, 944 N.E.2d 862, 864 (2011). The IMWL's silence as to the PPA, coupled with its incorporation of non-PPA provisions of the FLSA, demonstrate a clear and unambiguous intent *not to* adopt the PPA. *See id.*, 407 Ill. App. 3d at 877, 944 N.E.2d at 865 (statute silent regarding any notice requirement was "plain, clear and unambiguous" in that the statute did not adopt any notice requirement). The Court should give effect to that clear intent without looking beyond the IMWL's text.

II. The IMWL's implementing regulations demonstrate that the IMWL does not incorporate the PPA.

If the Court does look outside of the IMWL's plain text, IDOL regulations also show the IMWL does not incorporate the PPA. The IDOL's IMWL regulation in Title 56, Section 210.110 of the Illinois Administrative Code is incompatible with the PPA. Courts must, therefore, apply the IMWL to eschew the PPA, given that Section 210.110 has the force and effect of law. And even if Section 210.110 did not automatically resolve the issue before the Court, it would still embody the IDOL's reasonable interpretation of the IMWL, to which this Court should defer.

A. Title 56, Section 210.110 of the Administrative Code is incompatible with the PPA.

Section 210.110 conflicts with the PPA. It defines compensable "hours worked" under the IMWL as "all the time an employee is required to be on duty, or on the employer's premises, or at other prescribed places of work, and any additional time he or she is required or permitted to work for the

employer."[7] *See* Ill. Admin. Code tit. 56, § 210.110. Including the PPA in the IMWL would eviscerate this expansive definition of compensable time. Under the PPA, employees are *not* entitled to compensation for "all" mandatory time spent "on the employer's premises." *See* 29 U.S.C. § 254(a)(2). If workers spend such time completing activities "preliminary" or "postliminary" to their "principal activity or activities," then the PPA permits employers to withhold pay for that time *regardless* of whether the workers spend the time on their employers' premises. *Id.* Thus: the IMWL's regulations and the PPA are simply incompatible.

And this incompatibility is purposeful. The "rules that govern construction of statutes also apply to the construction of administrative regulations." *Kean v. Wal-Mart Stores, Inc.*, 235 Ill. 2d 351, 368, 919 N.E.2d 926, 936 (2009). So, where a regulation "includes particular language in one section" and "omits it in another," courts will presume the regulation "intentionally" omitted the language in the latter section. *Smith*, 2016 IL

[7] Such "hours worked" become compensable when combined with the IMWL's minimum wage and overtime provisions, which hinge on the hours an employee works for an employer. *E.g.*, 820 ILCS § 105/4(a)(1) ("Every employer shall pay to each of his employees in every occupation wages of not less than $2.30 per hour."); *id.* § 105/4(a)(3) ("Beginning on January 1, 2020, every employer shall pay to each of his or her employees who is under 18 years of age that has worked more than 650 hours for the employer during any calendar year a wage not less than the wage required for employees who are 18 years of age or older under paragraph (1) of subsection (a) of Section 4 of this Act."); *id.* § 105/4a ("[N]o employer shall employ any of his employees for a workweek of more than 40 hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than 1 1/2 times the regular rate at which he is employed.").

119659, ¶ 30. Section 210.110 includes language adopting the federal regulations that specify when an employee's commute time becomes 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 C.F.R. 785.33 – 785.41 (1994, no subsequent dates or editions), as amended at 26 FR 190."). But Section 210.110 omits language adopting the PPA compensability exclusions for preliminary and postliminary activities. *Id.* Hence, the Court should infer that Section 210.110 intentionally leaves those exclusions out.

That would be consistent with the approach this Court recently took in *Mercado v. S&C Electric Company*, 2025 IL 129526 (2025). There, the Court considered whether the IMWL regulation in Section 210.410(a) of the Administrative Code should be "read to exclude," from the calculation of workers' "regular rate," "*all* compensation not measured by or dependent on hours worked." *Id.* ¶ 31. The Court said no; such a reading would "render[] superfluous other enumerated exclusions in section 210.410 that are not measured by or dependent on hours worked." *Id.* ¶ 32. After all, if "section 210.410(a) exclude[d] all amounts not measured by or dependent on hours worked, there would be no need to list specific exclusions for types of compensation that are not measured by or dependent on hours worked." *Id.* In other words: Section 210.410's inclusion of specific exclusions means its omission of other—or broader—exclusions is intentional. Likewise, Section

210.110's adoption of certain federal travel time rules means its omission of the PPA compensability exclusions for "preliminary" and "postliminary" activities is intentional.

B. Because Section 210.110 and the PPA are incompatible, the IMWL eschews the PPA as a matter of law.

Consequently, the Court should apply Section 210.110—as written—to mean the IMWL rejects the PPA. The IMWL expressly grants the IDOL authority to "make and revise administrative regulations, including definitions of terms, as [it] deems appropriate to carry out the purposes" of the IMWL. 820 ILCS § 105/10. The IDOL's regulations, therefore, "have the force and effect of law." *Mercado*, 2025 IL 129526, ¶ 20; *Cnty. of Will v. Pollution Control Bd.*, 2019 IL 122798, ¶¶ 41–42, 135 N.E.3d 49, 60 (2019) (stating that the Illinois Pollution Control Board's "regulations have the force and effect of laws, and they are presumptively valid," where Illinois's Environmental Protection Act had given the Board power to "defin[e] environmental protection standards through rules and regulations"). Put differently: Section 210.110 is part of the IMWL just like the IMWL's statutory provisions. And because Section 210.110 rejects the PPA, the IMWL does not incorporate the PPA.

C. Alternatively, the Court should defer to the IDOL interpretation of the PPA embodied in Section 210.110 and find the IMWL rejects the PPA.

Even if Section 210.110 is not automatically dispositive, the Court should find that the IMWL interpretation embodied in Section 210.110

deserves substantial deference. This Court "give[s] substantial weight and deference to an interpretation of an ambiguous statute by the agency charged with administering and enforcing that statute." *People ex rel. Birkett v. City of Chicago*, 202 Ill. 2d 36, 46, 779 N.E.2d 875, 881 (2002); *see also Kerbes v. Raceway Assocs., LLC*, 2011 IL App (1st) 110318, ¶ 23, 961 N.E.2d 865, 870 (2011) ("administrative rules" are "entitled to weight and deference so long as they are not inconsistent with the statute pursuant to which they are adopted"). Indeed, an agency's "reasonable" and "long-continued" construction of a statute creates "a presumption of correctness that is only slightly less persuasive than a judicial construction of the same act." *Birkett*, 202 Ill. 2d at 46.

The IDOL's definition of "hours worked" certainly clears this bar. It is reasonable because it is consistent with the IMWL's text and policy objectives. *See Supra* Part I; *Infra* Part III. And it is long-continued—the IDOL enacted the definition over *forty years* ago, and it has not changed the definition since. A52. So the Court should defer to the IDOL and find that the IMWL rejects the PPA.

Other courts have given deference to the IDOL's regulations, including the meaning of "hours worked," when statutory questions were left unanswered by the text of the IMWL. In *Wagner v. Air Methods Corporation,* 539 F. Supp. 3d 1157 (D. Colo. 2021), the court considered importing the FLSA's sleep time exception into the IMWL. *Id.* at 1167. It did not, choosing

instead to "defer to the Illinois Department of Labor in its definition of 'hours worked.'" *Id.* It noted Illinois did not adopt the sleep time rule, despite being aware of it, suggesting a conscious decision to depart from the FLSA. *Id.* at 1168–69. Thus, like here, "[n]othing indicate[d] that the Illinois regulation at issue [was] inconsistent with the [IMWL]," so the regulation controlled. *Id.* at 1167.

Wagner is not the only opinion to accord the IDOL's regulations deference. In *Department of Labor v. MCC Health Care*, 790 N.E.2d 38 (Ill. App. Ct. 2003), the court relied on the IDOL's regulations to decide whether a worker was properly classified as an independent contractor or an "employee" under the IMWL. *See id.* at 46 (deferring to Ill. Admin. Code, tit. 56, § 210.110). The court explained that the IDOL's "regulations have the force and effect of law." *Id.* Similarly, in *Kerbes*, because the IMWL did not define the meaning of "workweek," the court deferred to the IDOL's reasonable interpretation of that term. 961 N.E. 2d at 870, ¶ 23. IDOL regulations show the IMWL rejects the PPA compensability exclusions, and this Court should enforce those regulations.

D. Neither *Mercado* nor Section 210.120 of the Administrative Code indicate that the IMWL incorporates the PPA.

Amazon, of course, disagrees. It previously argued that IMWL regulations actually show that the IMWL incorporates the PPA. Amazon made its case based on a narrow reading of *Mercado* and a broad reading of Title 56,

Section 210.120 of the Administrative Code.[8] In reality, neither support Amazon's position.

To start, Section 210.120 does not indicate the IMWL incorporates the PPA. Section 210.120 says the IDOL "may refer to" FLSA regulations for "guidance in the interpretation of" the IMWL. Ill. Admin. Code tit. 56, § 210.120. But that is irrelevant to this case. The IDOL has not exercised its discretion, under Section 210.120, to incorporate the at-issue PPA rules into the IMWL. *Supra* Section II.A. It has done the opposite. It has excluded the at-issue PPA rules from the IMWL. *Id.*

Next, *Mercado* does not suggest that the IMWL adopts the PPA. *Mercado* simply notes that, per Section 210.120, "federal guidance as to the meaning of the federal Fair Labor Standards Act . . . is probative of the meaning of the [IMWL]." *Mercado*, 2025 IL 129526, ¶ 33. But to state the obvious: "probative" does not mean "controlling." Rather than binding Illinois courts, "federal authority" is merely "persuasive" as to the meaning of the IMWL, as *Mercado* explicitly states. *Id.*

And federal authority is not even *persuasive* in cases like this one. As the Seventh Circuit suggested, federal guidance is only probative of the IMWL's meaning where "both the FLSA and IMWL speak in tandem (or are

[8] These arguments appeared, in part, in a notice of supplemental authority filed in the Seventh Circuit regarding *Mercado*.

silent) on the relevant topic."[9] *Johnson*, 142 F.4th at 942. That was the situation that *Mercado* presented. As noted, *Mercado* evaluated Section 210.410(a) of the Illinois Administrative Code. 2025 IL 129526, ¶ 27. That section contains an exclusion that is also contained in the FLSA. *Compare* Ill. Admin. Code tit. 56, § 210.410(a) (excluding, from the calculation of "regular rate," "[s]ums paid as gifts such as those made at holidays or other amounts that are not measured by or dependent on hours worked"), *with* 29 U.S.C. § 207(e)(1) (excluding, from the calculation of "regular rate," "sums paid as gifts; payments in the nature of gifts made at Christmas time or on other special occasions, as a reward for service, the amounts of which are not measured by or dependent on hours worked, production, or efficiency"). So federal authority was persuasive in *Mercado* because, there, state and federal law paralleled one another. 2025 IL 129526, ¶ 33.

Yet "[t]hat is not the case here." *Johnson*, 142 F.4th at 942. Although "the underlying overtime provisions" in the IMWL and FLSA "are identical, there is a relevant and express statutory exclusion from compensable time in the federal statute that is not present in the state statute." *Id.* And as the

[9] Relatedly, the "well-established trend of looking to federal authority and standards to interpret and apply the IMWL" to which Amazon pointed in the Seventh Circuit has no significance to the question before the Court. *See Johnson*, 142 F.4th at 942. "[N]one of the cases cited by Amazon applying Illinois law (beyond [a] non-binding . . . footnote [from one case]) involved the same exclusions at issue here under the PPA." *Id.* "And none of the cases involved a situation comparable to what Amazon asks . . . to do here—to import a FLSA statutory exclusion into the IMWL where it does not exist and an IMWL regulation suggests the opposite." *Id.*

Seventh Circuit pointed out: there is "a difference between applying federal regulations and caselaw to interpret parallel state statutory or regulatory language (the typical situation in the caselaw) and importing federal statutory exclusions into the state statute where they are not otherwise found" and "where the regulations are in tension with the statutory exclusion." *Id.*

The point is: neither Section 210.120 nor *Mercado* suggest the Court should look to federal law to interpret the IMWL in this matter. The IMWL "is not identical to the FLSA." *Soucek v. Breath of Life Pro. Servs.,* 2021 IL App (1st) 210413, ¶ 68 (2021) (citation and quotation omitted); *Andrews v. Kowa Printing Corp.*, 217 Ill. 2d 101, 111 (2005) (noting a "critical difference" between the IMWL and FLSA). Where, as here, the IMWL and its regulations differ from the FLSA, this Court should give those differences effect.

III. The IMWL's history shows the Illinois legislature did not intend for the IMWL to incorporate the PPA.

The IMWL's history also supports Plaintiffs' position. Courts may look to a "statute's background" and "remarks made by the legislators during their debates on the legislation" to "discern the meaning" of a statute. *Lieb v. Judges' Ret. Sys. Of Illinois*, 314 Ill. App. 3d 87, 92, 731 N.E.2d 809, 813 (2000). They may also consider "the purpose and necessity for the law, the evils sought to be remedied, and the goals to be achieved." *Brucker v. Mercola*, 227 Ill. 2d 502, 514, 886 N.E.2d 306, 313 (2007).

The IMWL's background shows the Illinois legislature never intended for the IMWL to adopt the PPA. Illinois enacted the IMWL in 1971, twenty-four years after Congress enacted the PPA. P.A. 77-1451, § 1, eff. Sept. 6, 1971. Had the legislature wished to incorporate the long-existing PPA into the IMWL, it could simply have done so. But it did not. This shows the legislature did not, in enacting the IMWL, intend to adopt the PPA. *See Bd. of Educ. of Richland Sch. Dist. No. 88a v. City of Crest Hill*, 2020 IL App (3d) 190225, ¶ 33, 165 N.E.3d 548, 555 (2020), *aff'd*, 2021 IL 126444, ¶ 33, 183 N.E.3d 856 (2021) ("If our legislature intended 'contiguous,' as used in section 11-74.4-4(a), to include parcels separated by a public utility right-of-way, as in section 7-1-1 of the Illinois Municipal Code, it would have said so.").

The legislature's subsequent actions show the same thing. The legislature has amended the IMWL many times to adopt specific FLSA standards. It did so in 1976, when it conformed the IMWL's minimum wage rates to the FLSA's rates. 79th Ill. Gen. Assemb., H.R., Transcript of June 16, 1976, 169–170 (Statement of Representative Hanahan) (bill would make IMWL "rate of minimum pay" "$2.30 an hour," consistent with federal rate). It also did so in January 1977, when it adopted the FLSA's white collar exemptions; in September 1977, when it adopted the FLSA's commissioned employee exemption; in 2004, when it incorporated the 2003 versions of those same exemptions; and in 2016, when it adopted, in part, an FLSA exemption related to collective bargaining units. 79th Ill. Gen. Assem., Senate

Proceedings, December 16, 1976, at 59 (Statement of Senator Bruce) (stating, regarding white collar exemptions, that "we just picked [language] right up out of the [FLSA] and put it here"); 1977 Ill. Legis. Serv. P.A. 79-1523 (H.B. 1930); 1977 Ill. Legis. Serv. P.A. 80-735 (H.B. 758); 2004 Ill. Legis. Serv. P.A. 93-672 (S.B. 1645); 2015 Ill. Legis. Serv. P.A. 99-17 (S.B. 38); 820 ILCS §§ 105/4a(2)(E),(F),(J). Clearly, when the Illinois legislature intends to incorporate federal law into the IMWL, it does so explicitly. It simply has not done so for the PPA.

Remarks from legislative sessions also show Illinois lawmakers never intended for the IMWL to parallel the FLSA in all respects (much less to incorporate the PPA, specifically). When discussing amendments to the IMWL in 1975, the House Sponsor to the bill said: "If we just followed the Federal Act, we wouldn't need a state law." 79th Ill. Gen. Assem., House Proceedings, June 4, 1975, at 117–118 (Statement of Representative Hanahan). He then re-confirmed that the IMWL is "not identical to the Federal Act," even though certain provisions in both laws align. *Id.*

Lastly, the IMWL's policy objectives weigh against a finding that the IMWL incorporates the PPA. As the House Sponsor put it when discussing a bill to amend the IMWL to include an overtime provision:

> It's a very important bill to organize labor, not because they'll benefit by it, but because people who work for a living should have a floor on their wages. It's the only system we know that we could guarantee that the exploitation of those who haven't got the privileges of a lobby, haven't got the privileges of a union

> representing [them], that they would have the opportunity to be guaranteed under law a very basic minimum wage.

79th Ill. Gen. Assem., House Proceedings, June 4, 1975, at 116–117 (Statement of Representative Hanahan). Because the very purpose of the IMWL is to protect workers and their right to a living wage, courts should not read new, *implicit* restrictions into the law that prevent workers from accessing such wages. 820 ILCS § 105/2; *see Iwan Ries & Co. v. City of Chicago*, 2019 IL 124469, ¶ 19, 160 N.E.3d 916, 920 (2019) (when "construing a statute" courts should "remain mindful of the subject it addresses and the legislature's apparent purpose in enacting the statute"); *Khan v. Deutsche Bank AG*, 2012 IL 112219, ¶ 69, 978 N.E.2d 1020, 1043 (2012) ("The primary goal in construing a statute is to give effect to the intention of the legislature.").

CONCLUSION

For these reasons, the Court should hold that the IMWL does not incorporate the PPA provision codified in 29 U.S.C. § 254(a)(2).

Dated: September 19, 2025

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 32 pages.

Dated: September 19, 2025

/s/ John J. Frawley
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CERTIFICATE OF FILING AND SERVICE

On September 19, 2025, I served copies of the foregoing brief and its appendix via the Odyssey eFileIL electronic filing system and via electronic mail on the following counsel for Defendant-Appellee Amazon.com Services LLC:

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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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APPEAL,CUMMINGS,TERMED

United States District Court
Northern District of Illinois - CM/ECF NextGen 1.7.1.1 (Chicago)
CIVIL DOCKET FOR CASE #: 1:23-cv-00685

Johnson v. Amazon.Com Services, LLC.
Assigned to: Honorable Thomas M. Durkin
Case in other court: Circuit Court of Cook County, 2022-ch-12303
24-01028
Cause: 28:1332 Diversity-Petition for Removal

Date Filed: 02/03/2023
Date Terminated: 01/04/2024
Jury Demand: Both
Nature of Suit: 790 Labor: Other
Jurisdiction: Diversity

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Date Filed	#	Docket Text
02/03/2023	1	NOTICE of Removal from Circuit Court of Cook County, case number (2022ch12303) filed by Amazon.Com Services, LLC. Filing fee $ 402, receipt number AILNDC-20316520. (Attachments: # 1 Exhibit A - Complaint, # 2 Exhibit B - Anderson Complaint, # 3 Exhibit C - Summons and Affidavit of Service, # 4 Exhibit D - Motion for Leave, # 5 Exhibit E - Agreed Order, # 6 Exhibit F - Amended Complaint, # 7 Exhibit G - Cook County Circuit Court Docket, # 8 Exhibit H - Hoffman Declaration, # 9 Exhibit I - Woods Declaration)(Gaffney, Kevin) (Entered: 02/03/2023)
02/03/2023	2	CIVIL Cover Sheet (Gaffney, Kevin) (Entered: 02/03/2023)
02/03/2023	3	NOTIFICATION of Affiliates pursuant to Local Rule 3.2 by Amazon.Com Services, LLC. (Gaffney, Kevin) (Entered: 02/03/2023)
02/03/2023	4	ATTORNEY Appearance for Defendant Amazon.Com Services, LLC. by Sari M. Alamuddin (Alamuddin, Sari) (Entered: 02/03/2023)

02/03/2023	5	ATTORNEY Appearance for Defendant Amazon.Com Services, LLC. by Alexandra Giselle Belzley (Belzley, Alexandra) (Entered: 02/03/2023)
02/03/2023	6	ATTORNEY Appearance for Defendant Amazon.Com Services, LLC. by Kevin Francis Gaffney (Gaffney, Kevin) (Entered: 02/03/2023)
02/06/2023	7	MAILED Rule 77d Letter to counsel of record. (gcy,) (Entered: 02/06/2023)
02/06/2023	8	ATTORNEY Appearance for Plaintiff Lisa Johnson by Douglas M. Werman (Werman, Douglas) (Entered: 02/06/2023)
02/06/2023	9	ATTORNEY Appearance for Plaintiff Lisa Johnson by Maureen Ann Salas (Salas, Maureen) (Entered: 02/06/2023)
02/06/2023		CASE ASSIGNED to the Honorable Thomas M. Durkin. Designated as Magistrate Judge the Honorable Jeffrey I Cummings. Case assignment: Random assignment. (jb,) (Entered: 02/06/2023)
02/06/2023	10	MINUTE entry before the Honorable Thomas M. Durkin: By 2/27/2023, the parties are to file a joint status report. The parties may refer to the format detailed on the Court's website under New and Reassigned cases. Mailed notice. (ecw,) (Entered: 02/06/2023)
02/06/2023	11	ATTORNEY Appearance for Plaintiff Lisa Johnson by Donny J. Foty (Foty, Donny) (Entered: 02/06/2023)
02/08/2023	12	MOTION by Defendant Amazon.Com Services, LLC. for extension of time to file answer *or Otherwise Respond to the Amended Complaint (AGREED MOTION)* (Belzley, Alexandra) (Entered: 02/08/2023)
02/08/2023	13	MINUTE entry before the Honorable Thomas M. Durkin: Agreed motion for extension of time to answer 12 is granted. Amazon is to answer or otherwise respond to Plaintiff's First Amended Complaint by 2/17/2023. Mailed notice. (ecw,) (Entered: 02/08/2023)
02/15/2023	14	MOTION by Plaintiff Lisa Johnson for leave to file *a Second Amended Complaint, Setting a Responsive Pleading Deadline, and a Briefing Schedule (AGREED)* (Werman, Douglas) (Entered: 02/15/2023)
02/15/2023	15	MINUTE entry before the Honorable Thomas M. Durkin: Agreed motion for leave to file a second amended complaint, setting a responsive pleading deadline, and a briefing schedule 14 is granted. Plaintiff is to file her Second Amended Complaint on or before 2/28/2023. Amazon is to file its responsive pleading or Rule 12 motion on or before 3/21/2023. In the event Amazon files a Rule 12 motion, Plaintiff is to file her response to the motion on or before 4/11/2023, and Amazon is to file its reply in support of the motion on or before 4/28/2023. The 2/27/2023 joint status report deadline is extended to 3/14/2023. Mailed notice. (ecw,) (Entered: 02/15/2023)
02/28/2023	16	*Second* AMENDED complaint by Lisa Johnson, Gale Miller Anderson against All Defendants *with Jury Demand* (Attachments: # 1 Exhibit Consent Form for Lisa Johnson, # 2 Exhibit Consent Form for Gale Miller Anderson)(Foty, Donny) (Entered: 02/28/2023)
03/09/2023	17	MOTION by Defendant Amazon.Com Services, LLC. for leave to file excess pages *JOINT Motion* (Belzley, Alexandra) (Entered: 03/09/2023)
03/10/2023	18	MINUTE entry before the Honorable Thomas M. Durkin: Joint motion for leave to file excess pages 17 is granted. Mailed notice. (ecw,) (Entered: 03/10/2023)
03/14/2023	19	STATUS Report *(New Case Joint Status Report)* by Lisa Johnson, Gale Miller Anderson (Salas, Maureen) (Entered: 03/14/2023)

03/14/2023	20	MINUTE entry before the Honorable Thomas M. Durkin: Discovery is stayed by agreement of the parties. The briefing schedule set forth in Minute Entry 15 on Amazon's motion to dismiss stands. A telephone status hearing is set for 6/20/2023 at 9:00 a.m. To join the telephone conference, dial 877-402-9757, Access Code 4410831. Members of the public and media will be able to call in to listen to this hearing. Please be sure to keep your phone on mute when you are not speaking. Persons granted remote access to proceedings are reminded of the general prohibition against photographing, recording, and rebroadcasting of court proceedings. Violation of these prohibitions may result in sanctions, including removal of court issued media credentials, restricted entry to future hearings, denial of entry to future hearings, or any other sanctions deemed necessary by the Court. Mailed notice. (ecw,) (Entered: 03/14/2023)
03/21/2023	21	MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM by Defendant Amazon.Com Services, LLC. (Belzley, Alexandra) (Entered: 03/21/2023)
03/21/2023	22	MEMORANDUM of Law by Defendant Amazon.Com Services, LLC's In Support of Its Motion to Dismiss the Second Amended Complaint (Belzley, Alexandra) Modified on 3/22/2023 (ecw,). (Entered: 03/21/2023)
04/05/2023	23	MOTION by Plaintiffs Lisa Johnson, Gale Miller Anderson for leave to file excess pages *(Plaintiffs' Unopposed Motion for Extension of Page Limitations for Their Response to Defendant's Motion to Dismiss the Second Amended Complaint)* (Werman, Douglas) (Entered: 04/05/2023)
04/06/2023	24	MINUTE entry before the Honorable Thomas M. Durkin: Unopposed motion for leave to file excess pages 23 is granted. Mailed notice. (ecw,) (Entered: 04/06/2023)
04/11/2023	25	RESPONSE by Lisa Johnson, Gale Miller Andersonin Opposition to MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM by Defendant Amazon.Com Services, LLC. 21 (Attachments: # 1 Exhibit 1, # 2 Exhibit 2)(Werman, Douglas) (Entered: 04/11/2023)
04/21/2023	26	MOTION by Defendant Amazon.Com Services, LLC. for leave to file excess pages *unopposed* (Belzley, Alexandra) (Entered: 04/21/2023)
04/21/2023	27	MINUTE entry before the Honorable Thomas M. Durkin: Unopposed motion for leave to file excess pages 26 is granted. Mailed notice. (ecw,) (Entered: 04/21/2023)
04/28/2023	28	REPLY by Defendant Amazon.Com Services, LLC. to Motion to Dismiss for Failure to State a Claim 21 (Gaffney, Kevin) (Entered: 04/28/2023)
05/01/2023	29	MINUTE entry before the Honorable Thomas M. Durkin: The telephone status hearing set for 6/20/2023 is reset for 6/22/2023 at 9:00 a.m. The dial-in information will remain the same. Mailed notice. (ecw,) (Entered: 05/01/2023)
06/20/2023	30	MINUTE entry before the Honorable Thomas M. Durkin: The telephone status hearing set for 6/22/2023 is reset for 10/20/2023 at 9:00 a.m. To join the telephone conference, dial 877-402-9757, Access Code 4410831. Throughout the hearing, each speaker will be expected to identify themselves for the record before speaking. Counsel must be in a quiet area while on the line. Please be sure to keep your phone on mute when you are not speaking. Members of the public and media will be able to call in to listen to this hearing. Persons granted remote access to proceedings are reminded of the general prohibition against photographing, recording, and rebroadcasting of court proceedings. Violation of these prohibitions may result in sanctions, including removal of court issued media credentials, restricted entry to future hearings, denial of entry to future hearings, or any other sanctions deemed necessary by the Court. Mailed notice. (ecw,) (Entered: 06/20/2023)

10/18/2023	31	MINUTE entry before the Honorable Thomas M. Durkin: The telephone status hearing set for 10/20/2023 is stricken and reset to 12/7/2023 at 9:00 a.m. To join the telephone conference, dial 877-402-9757, Access Code 4410831. Throughout the hearing, each speaker will be expected to identify themselves for the record before speaking. Counsel must be in a quiet area while on the line. Please be sure to keep your phone on mute when you are not speaking. Members of the public and media will be able to call in to listen to this hearing. Persons granted remote access to proceedings are reminded of the general prohibition against photographing, recording, and rebroadcasting of court proceedings. Violation of these prohibitions may result in sanctions, including removal of court issued media credentials, restricted entry to future hearings, denial of entry to future hearings, or any other sanctions deemed necessary by the Court. Mailed notice. (kp,) (Entered: 10/18/2023)
12/06/2023	32	MINUTE entry before the Honorable Thomas M. Durkin: The telephone status hearing set for 12/7/2023 is stricken. The Court will enter a written order on the motion to dismiss 21 shortly. Mailed notice. (ecw,) (Entered: 12/06/2023)
12/07/2023	33	MEMORANDUM Opinion and Order: For the reasons stated in the attached order, Amazon's motion to dismiss 21 is granted. Plaintiffs' claims are dismissed without prejudice to filing an amended complaint by 1/11/2024. If Plaintiffs fail to file an amended complaint by 1/11/2024, the dismissal with be with prejudice. If Plaintiffs decided not to file an amended complaint, they should inform the Court by email to the Courtroom Deputy as soon as possible so judgment can be entered and the case closed. Signed by the Honorable Thomas M. Durkin on 12/7/2023. Mailed notice. (ecw,) (Entered: 12/07/2023)
12/28/2023	34	ANNUAL REMINDER: Pursuant to Local Rule 3.2 (Notification of Affiliates), any nongovernmental party, other than an individual or sole proprietorship, must file a statement identifying all its affiliates known to the party after diligent review or, if the party has identified no affiliates, then a statement reflecting that fact must be filed. An affiliate is defined as follows: any entity or individual owning, directly or indirectly (through ownership of one or more other entities), 5% or more of a party. The statement is to be electronically filed as a PDF in conjunction with entering the affiliates in CM/ECF as prompted. As a reminder to counsel, parties must supplement their statements of affiliates within thirty (30) days of any change in the information previously reported. This minute order is being issued to all counsel of record to remind counsel of their obligation to provide updated information as to additional affiliates if such updating is necessary. If counsel has any questions regarding this process, this LINK will provide additional information. Signed by the Executive Committee on 12/28/2023: Mailed notice. (tg,) (Entered: 12/28/2023)
01/04/2024	35	MINUTE entry before the Honorable Thomas M. Durkin: Plaintiff's counsel reported that they do not intend to file an amended complaint. Case is dismissed with prejudice. Civil case terminated. Mailed notice. (ecw,) (Entered: 01/04/2024)
01/04/2024	36	ENTERED JUDGMENT on 1/4/2024. Mailed notice. (ecw,) (Entered: 01/04/2024)
01/05/2024	37	NOTICE of appeal by Lisa Johnson, Gale Miller Anderson regarding orders 33 , 36 Filing fee $ 605, receipt number AILNDC-21492246. Receipt number: n (Salas, Maureen) (Entered: 01/05/2024)
01/05/2024	38	DOCKETING Statement by Lisa Johnson, Gale Miller Anderson regarding notice of appeal 37 (Salas, Maureen) (Entered: 01/05/2024)
01/08/2024	39	NOTICE of Appeal Due letter sent to counsel of record regarding notice of appeal 37 . (ph,) (Entered: 01/08/2024)

01/08/2024	40	TRANSMITTED to the 7th Circuit the short record on notice of appeal 37 . Notified counsel (ph,) (Entered: 01/08/2024)
01/09/2024	41	ACKNOWLEDGMENT of receipt of short record on appeal regarding notice of appeal 37 ; USCA Case No. 24-1028 (nsf,) (Entered: 01/09/2024)

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03/13/2024 13:30:09			
PACER Login:	jfrawley3	**Client Code:**	
Description:	Docket Report	**Search Criteria:**	1:23-cv-00685
Billable Pages:	5	**Cost:**	0.50

General Docket
Seventh Circuit Court of Appeals

Court of Appeals Docket #: 24-1028 **Docketed:** 01/08/2024
Nature of Suit: 3790 Other Labor Litigation
Lisa Johnson, et al v. Amazon.com Services LLC
Appeal From: Northern District of Illinois, Eastern Division
Fee Status: Paid

Case Type Information:
1) civil
2) private
3) -

Originating Court Information:
District: 0752-1 : 1:23-cv-00685
Trial Judge: Thomas M. Durkin, District Court Judge
Date Filed: 02/03/2023
Date Order/Judgment: 01/04/2024
Date NOA Filed: 01/05/2024

Prior Cases:
None

Current Cases:
None

LISA JOHNSON Plaintiff - Appellant	Don J. Foty, Attorney Direct: 713-523-0001 [COR LD NTC Retained] FOTY LAW GROUP Suite 250 Two Greenway Plaza Houston, TX 77046 Maureen Ann Salas, Attorney Direct: 312-419-1008 [COR LD NTC Retained] WERMAN SALAS P.C. Suite 1402 77 W. Washington Street Chicago, IL 60602 John Frawley, Attorney Direct: 312-419-1008 [NTC Retained] WERMAN SALAS P.C. Suite 1402 77 W. Washington Street Chicago, IL 60602 Douglas M. Werman, Attorney Direct: 312-419-1008 [COR NTC Retained] WERMAN SALAS P.C. Suite 1402 77 W. Washington Street Chicago, IL 60602
GALE MILLER ANDERSON Plaintiff - Appellant	Don J. Foty, Attorney Direct: 713-523-0001 [COR LD NTC Retained] (see above) Maureen Ann Salas, Attorney Direct: 312-419-1008 [COR LD NTC Retained] (see above)

	John Frawley, Attorney Direct: 312-419-1008 [NTC Retained] (see above) Douglas M. Werman, Attorney Direct: 312-419-1008 [COR NTC Retained] (see above)
v.	
AMAZON.COM SERVICES LLC Defendant - Appellee	Kevin Gaffney, Attorney Direct: 312-324-1138 [COR LD NTC Retained] MORGAN, LEWIS & BOCKIUS LLP Suite 2800 110 N. Wacker Drive Chicago, IL 60606 Sari M. Alamuddin, Attorney Direct: 312-324-1158 [COR NTC Retained] MORGAN, LEWIS & BOCKIUS LLP Suite 2800 110 N. Wacker Drive Chicago, IL 60606 Michael E. Kenneally, Attorney Direct: 202-739-3000 [COR NTC Retained] MORGAN, LEWIS & BOCKIUS LLP 1111 Pennsylvania Avenue, N.W. Washington, DC 20004-2541

LISA JOHNSON and GALE MILLER ANDERSON, individually and on behalf of all others similarly situated,
Plaintiffs - Appellants

v.

AMAZON.COM SERVICES LLC,
Defendant - Appellee

01/08/2024	☐ 1 21 pg, 2.18 MB	Private civil case docketed. Fee paid. Docketing statement filed. Transcript information sheet due by 01/22/2024. Appellant's brief due on or before 02/20/2024 for Gale Miller Anderson and Lisa Johnson [1] [7357757] [24-1028] (AP) [Entered: 01/09/2024 12:00 PM]
01/10/2024	☐ 2 1 pg, 187.74 KB	Circuit Rule 26.1 Disclosure Statement and Appearance filed by Attorney Maureen A. Salas for Appellants Gale Miller Anderson and Lisa Johnson. [2] [7358004] (L-Yes; E-Yes; R-No) [24-1028] (Salas, Maureen) [Entered: 01/10/2024 01:50 PM]
01/10/2024	☐ 3 1 pg, 87.88 KB	Circuit Rule 26.1 Disclosure Statement and Appearance filed by Attorney Douglas M. Werman for Appellants Gale Miller Anderson and Lisa Johnson. [3] [7358005] (L-No; E-Yes; R-No) [24-1028]--[Edited 01/10/2024 by FP to reflect that atty. Werman is added to the docket.] (Werman, Douglas) [Entered: 01/10/2024 01:54 PM]
01/10/2024	☐ 4 1 pg, 61.02 KB	Circuit Rule 26.1 Disclosure Statement and Appearance filed by Attorney Sari M. Alamuddin for Appellee Amazon.com Services LLC. [4] [7358082] (L-Yes; E-Yes; R-No) [24-1028][Edited 01/11/2024 by CG to reflect the addition of counsel.] (Alamuddin, Sari) [Entered: 01/10/2024 06:16 PM]
01/10/2024	☐ 5 1 pg, 61.19 KB	Circuit Rule 26.1 Disclosure Statement and Appearance filed by Attorney Michael E. Kenneally for Appellee Amazon.com Services LLC. [5] [7358083] (L-No; E-Yes; R-No) [24-1028] [Edited 01/11/2024 by CG to reflect the addition of counsel.] (Kenneally, Michael) [Entered: 01/10/2024 06:19 PM]
01/10/2024	☐ 6 1 pg, 61.15 KB	Circuit Rule 26.1 Disclosure Statement and Appearance filed by Attorney Kevin F. Gaffney for Appellee Amazon.com Services LLC. [6] [7358085] (L-No; E-Yes; R-No) [24-1028] (Gaffney, Kevin) [Entered: 01/10/2024 06:20 PM]
01/16/2024	☐ 7 2 pg, 76.5 KB	Notice of Circuit Rule 33 mediation issued. The mediation will be conducted via Zoom, Friday, February 2, 2024 at 2:00 p.m. Central Time. See Notice for further details and requirements. JB. [7] [7358869] [24-1028] (FP) [Entered: 01/16/2024 03:08 PM]
01/16/2024	☐ 8 1 pg, 104.35 KB	ORDER: Pursuant to Circuit Rule 33, briefing will proceed as follows: Appellants' brief due on or before 03/04/2024 for Gale Miller Anderson and Lisa Johnson. Appellee's brief due on or before 04/03/2024 for Amazon.com Services LLC. Appellants' reply brief, if any, is due on or before 04/24/2024 for Appellants Gale Miller Anderson and Lisa Johnson JB [7358870] [24-1028] (FP) [Entered: 01/16/2024 03:11 PM]
01/17/2024	☐ 9 1 pg, 79.07 KB	ORDER: In the present case, appellants claim that the district court had jurisdiction based on the Class Action Fairness Act. See 28 U.S.C. § 1332(d). Appellants' Circuit Rule 3(c) docketing statement, however, fails to identify the state of "citizenship" of at least one plaintiff and at least one defendant and also fails to set forth the amount in controversy. It is insufficient to cite the Class Action Fairness Act. Accordingly, appellants shall file a complete statement of jurisdiction that includes the omitted information. The statement is due on or before January 24, 2024. (See order for further details) DW [9] [9] [7359173] [24-1028] (PS) [Entered: 01/17/2024 02:02 PM]
01/24/2024	☐ 10 1 pg, 121.29 KB	Circuit Rule 26.1 Disclosure Statement and Appearance filed by Attorney Don Foty for Appellants Gale Miller Anderson and Lisa Johnson. [10] [7360449] (L-No; E-Yes; R-No) [24-1028] [Edited 01/24/2024 by CG to reflect the addition of counsel.] (Foty, Don) [Entered: 01/24/2024 11:08 AM]
01/24/2024	☐ 11 6 pg, 117.84 KB	Amended Jurisdictional Statement filed by Appellants Gale Miller Anderson and Lisa Johnson. [11] [7360523] [24-1028] (Salas, Maureen) [Entered: 01/24/2024 01:40 PM]
01/24/2024	☐ 12 1 pg, 102.05 KB	ORDER: Pursuant to Circuit Rule 33, briefing will proceed as follows: Appellants' brief due on or before 03/20/2024 for Gale Miller Anderson and Lisa Johnson. Appellee's brief due on or before 04/19/2024 for Amazon.com Services LLC. Appellants' reply brief, if any, is due on or before 05/10/2024 for Appellants Gale Miller Anderson and Lisa Johnson. JB [7360545] [24-1028] (HTP) [Entered: 01/24/2024 02:24 PM]
03/01/2024	☐ 13 1 pg, 203.66 KB	Added Attorney John Frawley for Appellants Gale Miller Anderson and Lisa Johnson, in case 24-1028 per disclosure statement. Circuit Rule 26.1 Disclosure Statement and Appearance filed by Attorney John J. Frawley for Appellants Lisa Johnson and Gale Miller Anderson. [13] [7367633] (L-No; E-Yes; R-No) [24-1028]--[Edited 03/01/2024 by MAN to reflect addition of counsel] (Frawley, John) [Entered: 03/01/2024 01:48 PM]
03/20/2024	☐ 14 87 pg, 4.23 MB	Submitted appellant brief by John J. Frawley for Appellants Lisa Johnson and Gale Miller Anderson. [14] NOTE: Access to this entry is limited to counsel of record. Once the document is approved by the court, it will be filed onto the court's docket as a separate entry which will be open to the public. [7371308] [24-1028] (Frawley, John) [Entered: 03/20/2024 04:36 PM]
03/20/2024	☐ 15 87 pg, 4.23 MB	Appellant's brief filed by Appellants Gale Miller Anderson and Lisa Johnson. Paper copies due on 03/27/2024. REMINDER: If a case is designated to proceed to oral argument, hearing notices will be mailed shortly before the date of oral argument. Please note that counsel's unavailability for oral argument must be submitted by letter, filed electronically with the Clerk's Office, no later than the filing of the appellant's brief in a criminal case and the filing of an appellee's brief in a civil case. See Cir. R. 34(b)(3). The court's calendar is located at https://www.ca7.uscourts.gov/cal/argcalendar.pdf. Once scheduled, oral argument is rescheduled only in extraordinary circumstances. See Cir. R. 34(b)(4), (e). [15] [7371310] [24-1028] (LJ) [Entered: 03/20/2024 04:44 PM]

03/26/2024	☐ 16	Paper copies of appellant brief filed by Appellants Gale Miller Anderson and Lisa Johnson. [16] [7372294] [24-1028] (EF) [Entered: 03/26/2024 01:05 PM]
04/19/2024	☐ 17 2 pg, 125.34 KB	NOTICE: Attorney Ms. Maureen Ann Salas for Appellants Gale Miller Anderson and Lisa Johnson will not be available for oral argument May 13-17, 2024; May 22-24, 2024; May 29-30, 2024; June 4, 2024; Sept. 4-5, 2024; Sept. 12-13, 2024; Oct. 29, 2024; Nov. 1, 2024; Nov. 6-8, 2024; Nov. 14-15, 2024; January 15, 2025; January 22-24, 2025; February 12-14, 2025; February 19-21, 2025. [17] [7377518] [24-1028] (Salas, Maureen) [Entered: 04/19/2024 12:54 PM]
04/19/2024	☐ 18 52 pg, 352.62 KB	Submitted appellee brief by Michael E. Kenneally for Appellee Amazon.com Services LLC. [18] NOTE: Access to this entry is limited to counsel of record. Once the document is approved by the court, it will be filed onto the court's docket as a separate entry which will be open to the public. [7377592] [24-1028] (Kenneally, Michael) [Entered: 04/19/2024 06:30 PM]
04/19/2024	☐ 19 52 pg, 359.2 KB	Appellee's brief filed by Appellee Amazon.com Services LLC. Paper copies due on 04/26/2024. [19] [7377619] [24-1028] (CAH) [Entered: 04/22/2024 08:53 AM]
04/23/2024	☐ 20	Paper copies of appellee brief filed by Appellee Amazon.com Services LLC. [20] [7378031] [24-1028] (SK) [Entered: 04/23/2024 10:36 AM]
05/10/2024	☐ 21 35 pg, 598.98 KB	Submitted appellant reply brief by John Frawley for Appellants Gale Miller Anderson and Lisa Johnson. [21] NOTE: Access to this entry is limited to counsel of record. Once the document is approved by the court, it will be filed onto the court's docket as a separate entry which will be open to the public. [7381706] [24-1028]--[Edited 05/13/2024 by LJ to reflect the correct filing type] (Frawley, John) [Entered: 05/10/2024 03:56 PM]
05/13/2024	☐ 22 35 pg, 596.38 KB	Appellant's reply brief filed by Appellants Gale Miller Anderson and Lisa Johnson. Paper copies due on 05/20/2024. [22] [7382020] [24-1028] (LJ) [Entered: 05/13/2024 04:15 PM]
05/14/2024	☐ 23	Paper copies of appellant reply brief filed by Appellants Gale Miller Anderson and Lisa Johnson. [23] [7382267] [24-1028] (EF) [Entered: 05/14/2024 02:10 PM]
05/17/2024	☐ 24 1 pg, 13.49 KB	NOTICE: Attorney Michael E. Kenneally for Appellee Amazon.com Services LLC will not be available for oral argument July 9-10, 2024 and October 22-25, 2024. [24] [7383142] [24-1028] (Kenneally, Michael) [Entered: 05/17/2024 03:41 PM]
06/20/2024	☐ 25 1 pg, 13.13 KB	NOTICE: Attorney Michael E. Kenneally for Appellee Amazon.com Services LLC will not be available for oral argument July 9-10, 2024, September 10-12, 2024, and October 22-25, 2024. [25] [7389142] [24-1028] (Kenneally, Michael) [Entered: 06/20/2024 06:58 PM]
07/15/2024	☐ 26 5 pg, 244.16 KB	Argument set for Wednesday, September 25, 2024, at 9:30 a.m. in the Main Courtroom, Room 2721, of the United States Court of Appeals for the Seventh Circuit, 219 S. Dearborn Street, Chicago, Illinois. Each side limited to 15 minutes. [26] [7393427] [24-1028] (SK) [Entered: 07/15/2024 10:45 AM]
09/16/2024	☐ 27 1 pg, 78.83 KB	Received argument confirmation from Michael E. Kenneally for Appellee Amazon.com Services LLC. [27] [7405865] [24-1028] (Kenneally, Michael) [Entered: 09/16/2024 06:24 PM]
09/18/2024	☐ 28 1 pg, 97.66 KB	Received argument confirmation from Maureen A. Salas for Appellants Gale Miller Anderson and Lisa Johnson. [28] [7406180] [24-1028] (Salas, Maureen) [Entered: 09/18/2024 10:33 AM]
09/20/2024	☐ 29	Received argument confirmation per argument email form for Attorney Ms. Maureen Ann Salas for Appellants Lisa Johnson and Gale Miller Anderson. [29] [7406577] [24-1028] (CAH) [Entered: 09/20/2024 08:35 AM]
09/20/2024	☐ 30	Received argument confirmation per argument email form for Attorney Michael E. Kenneally for Appellee Amazon.com Services LLC. [30] [7406590] [24-1028] (CAH) [Entered: 09/20/2024 09:14 AM]
09/25/2024	☐ 31	Case argued by Ms. Maureen Ann Salas for Appellants Lisa Johnson and Gale Miller Anderson and Michael E. Kenneally for Appellee Amazon.com Services LLC. [31] [7407528] [24-1028] (DAB) [Entered: 09/25/2024 11:51 AM]
09/25/2024	☐ 32	Case heard and taken under advisement by panel: Michael Y. Scudder, Circuit Judge; Thomas L. Kirsch, II, Circuit Judge and Nancy L. Maldonado, Circuit Judge. [32] [7407529] [24-1028] (DAB) [Entered: 09/25/2024 11:51 AM]
02/18/2025	☐ 33 18 pg, 271.69 KB	Filed Appellee Amazon.com Services LLC Citation of Additional Authority, per Circuit Rule 28(e). Argument set for: 09/25/2024. [33] [7435269] [24-1028] (Kenneally, Michael) [Entered: 02/18/2025 02:03 PM]
02/19/2025	☐ 34 2 pg, 145.06 KB	Filed Response by Appellants Gale Miller Anderson and Lisa Johnson to Citation of Supplemental Authority Under Rule 28(j). [34][7435518] [24-1028] (Werman, Douglas) [Entered: 02/19/2025 10:02 AM]
03/21/2025	☐ 35 12 pg, 656.16 KB	Filed Notice of Supplemental Authority Under Rule 28(j) by Appellants Lisa Johnson and Gale Miller Anderson. [35] [7441984] [24-1028] (Werman, Douglas) [Entered: 03/21/2025 04:10 PM]
03/26/2025	☐ 36 2 pg, 186.68 KB	Filed Appellee Amazon.com Services LLC Citation of Additional Authority, per Circuit Rule 28(e). [36] [7442755] [24-1028] (Kenneally, Michael) [Entered: 03/26/2025 12:36 PM]

07/08/2025	☐ 37 20 pg, 281.88 KB	Filed opinion of the court by Judge Maldonado. QUESTION CERTIFIED. We respectfully request that the Illinois Supreme Court answer the following certified question: 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)? Nothing in this opinion should be construed to limit the Illinois Supreme Court's inquiry, and we welcome the Justices reformulating the question to suit their review. Accordingly, the question is CERTIFIED. All further proceedings in this Court are STAYED while the Illinois Supreme Court considers this matter. Michael Y. Scudder, Circuit Judge; Thomas L. Kirsch II, Circuit Judge and Nancy L. Maldonado, Circuit Judge. [37] [7461717] [24-1028] (CG) [Entered: 07/08/2025 04:07 PM]
07/08/2025	☐ 212 pg, 7.1 MB	FOR COURT USE ONLY: Certified copies of 07/08/2025 Certified Opinion and case documents sent to the Illinois Supreme Court. [7461902-2] [7461902] [24-1028] (VG) [Entered: 07/09/2025 12:36 PM]
07/09/2025	☐ 38 1 pg, 45.22 KB	Filed Notice from the Supreme Court of Illinois. Case no. 132016. Dist. [38] [7462029] [24-1028] (VG) [Entered: 07/09/2025 03:22 PM]
07/11/2025	☐ 39 3 pg, 96.28 KB	Filed 07/11/2025 Order from the Illinois Supreme Court accepting the certified question and setting briefing. Dist. [39] [7462483] [24-1028] (VG) [Entered: 07/11/2025 02:29 PM]

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nuisance suits without outlawing legitimate suits for back pay? That seems to be the big question in the minds of a good many persons, including myself. I realize that there are two classes of suits which have been brought; one being those which are purely nuisance suits, brought for the purpose of embarrassing the employer, and with the mistaken idea that the union was going to make bargaining capital out of it. But there must be a good many times when legitimate suits are brought for back pay. Is the bill going to outlaw the nuisance suits and still make it permissible to bring legitimate suits?

Mr. DONNELL. Mr. President, I think that the bill sets forth to the best of the ability of the Committee on the Judiciary the rule which should be followed uniformly, in the first instance, taking up existing suits; and, in the second instance, taking up new suits. They are treated quite differently. By "new suits," I mean suits which arise after the passage of the act.

I do not want to guarantee to the Senator or to anyone else that there may not be some resulting instances of injustice. I think it has been demonstrated time and time again that almost any type of legislation may work some injustice. For instance, in the first report of the House Committee on Labor, accompanying the Fair Labor Standards Act, occurs the statement:

> A few may suffer some inconvenience, possibly financial loss, for a short time; but the fact that a tremendous number of injustices will be cured by the bill fully justifies the inconveniece and even the loss—

And so forth. Mr. President, we certainly shall endeavor to demonstrate to the Senate the fact that our bill takes an appalling national problem and solves the problem to the very best of the ability of our committee, and in a way which we think is accompanied by a minimum of deprivations, or a minimum of injustices.

It is very difficult to answer the Senator's question "Yes" or "No," without developing the facts.

Mr. AIKEN. Suppose it develops that the employees of a certain industry have failed to collect regular overtime pay due them over the past; will this bill permit them to collect it, if the employer is unwilling to pay it? Can they go to court to collect it?

Mr. DONNELL. Mr. President, if any employee is able to show either that he has a contract or that there is a customary practice, under which he is entitled to collect his money, he will be able to collect. That is the answer to the Senator's question.

Mr. AIKEN. How about the man who does not belong to a union at all, and is not financially able to go to the expense of making such a showing?

Mr. DONNELL. The answer to that is that any plaintiff in any case must make out his case, no matter how rich or how poor he may be. I undertake to say that under the law as laid down, if our bill should be passed, any plaintiff who could show either that he had a contract or that there was a customary practice in the plant or other place of work in which he was employed, entitling him to compensation, would obtain the compensation to which he laid claim.

Mr. FERGUSON. Mr. President, will the Senator yield?

Mr. DONNELL. I yield to the Senator from Michigan.

Mr. FERGUSON. Is it fair, in answering the question of the Senator from Vermont, to say that this proposed legislation is aimed to defeat those causes of action that are solely under the Fair Labor Standards Act?

Mr. DONNELL. Of course, the bill also applies to the Walsh-Healey and the Bacon-Davis Acts.

Mr. FERGUSON. Yes; it applies to the three acts, but there may be a cause of action under the common law or under a practice or a custom or a contract in pursuance of which recovery could be had. It may be desired to include a definition of a nuisance suit, which is a suit that does not come within the law; as I understand, a nuisance suit which would have no foundation at all, but was brought merely for the purpose of coercion. We are not dealing with that kind of suit, nor do I admit that these suits in question are such suits. I think they are brought by virtue of the three acts which have been mentioned and the decision of the Supreme Court, which says that the three acts, in and of themselves, give certain causes of action, without any contract, without any custom, or without any common law right. Is that a correct statement?

Mr. DONNELL. That is correct; and I may add to what the Senator said, though it is merely repeating a part of what he said, that the pending bill does not deprive any person of any right which he may have had under the common law.

Mr. HATCH. Mr. President, will the Senator yield?

Mr. DONNELL. I yield to the Senator from New Mexico.

Mr. HATCH. I merely rose to say to the Senator that, from the statement he just made, I surmise the details of the bill will be fully explained by him on Monday.

Mr. DONNELL. That is correct.

Mr. HATCH. At that time all these questions will be answered?

Mr. DONNELL. I shall endeavor to answer every question that I can.

Mr. HATCH. My suggestion was that we might follow the suggestion of the Senator from Missouri to recess at this time, until Monday, and let the Senator explain the bill fully and in detail, in answer to all questions, at that time.

Mr. FERGUSON. Mr. President, will the Senator yield?

Mr. DONNELL. I yield.

Mr. FERGUSON. I should like to add for the record of today that this bill would not strike at the heart of or defeat any cause of action that arose out of a State statute.

Mr. DONNELL. That is correct. The Federal Government has absolutely no power, as I see it, to cancel a right existing under State statute. At any rate, we do not undertake to assert any such power.

The PRESIDENT pro tempore. The Chair understands the Senator from Missouri yields the floor with the understanding he will be recognized when the Senate resumes its sessions on Monday.

Mr. DONNELL. That is correct.

LEAVE OF ABSENCE

Mr. FLANDERS. Mr. President, I desire to ask unanimous consent of such Senators as are present to be absent on Monday.

The PRESIDENT pro tempore. Without objection, leave is granted.

CONVEYANCE OF EASEMENTS IN CERTAIN LANDS TO AMERICAN TELEPHONE & TELEGRAPH CO.

The PRESIDENT pro tempore laid before the Senate the amendment of the House of Representatives to the bill (S. 220) to authorize the Secretary of the Navy to convey to American Telephone & Telegraph Co. an easement for communication purposes in certain lands situated in Virginia and Maryland, which was, on page 3, strike out lines 16 and 17.

Mr. GURNEY. I move that the Senate concur in the House amendments, for the proposed action is of advantage to the Government.

The motion was agreed to.

CONVEYANCE OF EASEMENTS IN CERTAIN LANDS TO VIRGINIA ELECTRIC & POWER CO.

The PRESIDENT pro tempore laid before the Senate the amendments of the House of Representatives to the bill (S. 221) to authorize the Secretary of the Navy to grant and convey to the Virginia Electric & Power Co., a perpetual easement in two strips of land comprising portions of the Norfolk Navy Yard, Portsmouth, Va., and for other purposes, which were, on page 1, line 8, to strike out the words "without cost to said corporation"; on page 2, line 15, after the word "Company", to insert the word "of"; on the same page, line 19, to strike out the words "without cost to said corporation"; and on page 3, line 4, to strike out the words "without cost to said corporation."

Mr. GURNEY. Mr. President, I move that the Senate concur in the House amendments. This matter deals with a right-of-way across land in Virginia, and the Senate should concur in the House amendments.

The motion was agreed to.

EXECUTIVE SESSION

Mr. GURNEY. Mr. President, some routine nominations in the junior grades, ensigns, lieutenants, and one or two captains, and some others, on which I shall ask unanimous consent for action at this time. What causes my request at this moment is the fact that there are two colonels to be made professors at the Military Academy. Therefore it is my purpose to ask that, as in executive session, the routine nominations be acted on at this time.

Mr. WHITE. Mr. President, I ask the Senator from South Dakota to withhold his request, because I was about to move that the Senate proceed to the consideration of executive business. I now move that the Senate proceed to the consideration of executive business.

The motion was agreed to; and the Senate proceeded to the consideration of executive business.

29 USC Ch. 9: PORTAL-TO-PORTAL PAY

From Title 29—LABOR

CHAPTER 9—PORTAL-TO-PORTAL PAY

§251. Congressional findings and declaration of policy

(a) The Congress finds that the Fair Labor Standards Act of 1938, as amended [29 U.S.C. 201 et seq.], has been interpreted judicially in disregard of long-established customs, practices, and contracts between employers and employees, thereby creating wholly unexpected liabilities, immense in amount and retroactive in operation, upon employers with the results that, if said Act as so interpreted or claims arising under such interpretations were permitted to stand, (1) the payment of such liabilities would bring about financial ruin of many employers and seriously impair the capital resources of many others, thereby resulting in the reduction of industrial operations, halting of expansion and development, curtailing employment, and the earning power of employees; (2) the credit of many employers would be seriously impaired; (3) there would be created both an extended and continuous uncertainty on the part of industry, both employer and employee, as to the financial condition of productive establishments and a gross inequality of competitive conditions between employers and between industries; (4) employees would receive windfall payments, including liquidated damages, of sums for activities performed by them without any expectation of reward beyond that included in their agreed rates of pay; (5) there would occur the promotion of increasing demands for payment to employees for engaging in activities no compensation for which had been contemplated by either the employer or employee at the time they were engaged in; (6) voluntary collective bargaining would be interfered with and industrial disputes between employees and employers and between employees and employees would be created; (7) the courts of the country would be burdened with excessive and needless litigation and champertous practices would be encouraged; (8) the Public Treasury would be deprived of large sums of revenues and public finances would be seriously deranged by claims against the Public Treasury for refunds of taxes already paid; (9) the cost to the Government of goods and services heretofore and hereafter purchased by its various departments and agencies would be unreasonably increased and the Public Treasury would be seriously affected by consequent increased cost of war contracts; and (10) serious and adverse effects upon the revenues of Federal, State, and local governments would occur.

The Congress further finds that all of the foregoing constitutes a substantial burden on commerce and a substantial obstruction to the free flow of goods in commerce.

The Congress, therefore, further finds and declares that it is in the national public interest and for the general welfare, essential to national defense, and necessary to aid, protect, and foster commerce, that this chapter be enacted.

The Congress further finds that the varying and extended periods of time for which, under the laws of the several States, potential retroactive liability may be imposed upon employers, have given and will give rise to great difficulties in the sound and orderly conduct of business and industry.

The Congress further finds and declares that all of the results which have arisen or may arise under the Fair Labor Standards Act of 1938, as amended, as aforesaid, may (except as to liability for liquidated damages) arise with respect to the Walsh-Healey and Bacon-Davis Acts [1] and that it is, therefore, in the national public interest and for the general welfare, essential to national defense, and necessary to aid, protect, and foster commerce, that this chapter shall apply to the Walsh-Healey Act and the Bacon-Davis Act.[1]

(b) It is declared to be the policy of the Congress in order to meet the existing emergency and to correct existing evils (1) to relieve and protect interstate commerce from practices which burden and obstruct it; (2) to protect the right of collective bargaining; and (3) to define and limit the jurisdiction of the courts.

(May 14, 1947, ch. 52, §1, 61 Stat. 84.)

Editorial Notes

References in Text

The Fair Labor Standards Act of 1938, as amended, referred to in subsec. (a), is act June 25, 1938, ch. 676, 52 Stat. 1060, which is classified generally to chapter 8 (§201 et seq.) of this title. For complete classification of this Act to the Code, see section 201 of this title and Tables.

This chapter, referred to in subsec. (a), was in the original "this Act", meaning act May 14, 1947, ch. 52, 61 Stat. 84, known as the Portal-to-Portal Act of 1947, which enacted this chapter and amended section 216 of this title. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

The Walsh-Healey and Bacon-Davis Acts, referred to in subsec. (a), are defined for purposes of this chapter in section 262 of this title.

Statutory Notes and Related Subsidiaries

Short Title of 1996 Amendment

Pub. L. 104–188, [title II], §2101, Aug. 20, 1996, 110 Stat. 1928, provided that: "This section and sections 2102 [amending section 254 of this title] and 2103 [enacting provisions set out as a note under section 254 of this title] may be cited as the 'Employee Commuting Flexibility Act of 1996'."

SHORT TITLE

Act May 14, 1947, ch. 52, §15, 61 Stat. 90, provided that: "This Act [enacting this chapter and amending section 216 of this title] may be cited as the 'Portal-to-Portal Act of 1947'."

SEPARABILITY

Act May 14, 1947, ch. 52, §14, 61 Stat. 90, provided: "If any provision of this Act [see Short Title note above] or the application of such provision to any person or circumstance is held invalid, the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected thereby."

[1] *See References in Text note below.*

§252. Relief from certain existing claims under the Fair Labor Standards Act of 1938, as amended, the Walsh-Healey Act, and the Bacon-Davis Act

(a) Liability of employer

No employer shall be subject to any liability or punishment under the Fair Labor Standards Act of 1938, as amended [29 U.S.C. 201 et seq.] the Walsh-Healey Act, or the Bacon-Davis Act [1] (in any action or proceeding commenced prior to or on or after May 14, 1947), 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 any activity of an employee engaged in prior to May 14, 1947, except an activity which was compensable by either—

(1) an express provision of a written or nonwritten contract in effect, at the time of such activity, between such employee, his agent, or collective-bargaining representative and his employer; or

(2) a custom or practice in effect, at the time of such activity, at the establishment or other place where such employee was employed, covering such activity, not inconsistent with a written or nonwritten contract, in effect at the time of such activity, between such employee, his agent, or collective-bargaining representative and his employer.

(b) Compensable activity

For the purposes of subsection (a), an activity shall be considered as compensable under such contract provision or such custom or practice only when it was engaged in during the portion of the day with respect to which it was so made compensable.

(c) Time of employment

In the application of the minimum wage and overtime compensation provisions of the Fair Labor Standards Act of 1938, as amended [29 U.S.C. 201 et seq.], of the Walsh-Healey Act, or of the Bacon-Davis Act,[1] in determining the time for which an employer employed an employee there shall be counted all that time, but only that time, during which the employee engaged in activities which were compensable within the meaning of subsections (a) and (b) of this section.

(d) Jurisdiction

No court of the United States, of any State, Territory, or possession of the United States, or of the District of Columbia, shall have jurisdiction of any action or proceeding, whether instituted prior to or on or after May 14, 1947, to enforce liability or impose punishment for or on account of the failure of the employer to pay minimum wages or overtime compensation under the Fair Labor Standards Act of 1938, as amended [29 U.S.C. 201 et seq.], under the Walsh-Healey Act, or under the Bacon-Davis Act,[1] to the extent that such action or proceeding seeks to enforce any liability or impose any punishment with respect to an activity which was not compensable under subsections (a) and (b) of this section.

(e) Assignment of actions

No cause of action based on unpaid minimum wages, unpaid overtime compensation, or liquidated damages, under the Fair Labor Standards Act of 1938, as amended [29 U.S.C. 201 et seq.], the Walsh-Healey Act, or the Bacon-Davis Act,[1] which accrued prior to May 14, 1947, or any interest in such cause of action, shall hereafter be assignable, in whole or in part, to the extent that such cause of action is based on an activity which was not compensable within the meaning of subsections (a) and (b).

(May 14, 1947, ch. 52, §2, 61 Stat. 85.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Fair Labor Standards Act of 1938, as amended, referred to in subsecs. (a), (c) to (e), is act June 25, 1938, ch. 676, 52 Stat. 1060, which is classified generally to chapter 8 (§201 et seq.) of this title. For complete classification of this Act to the Code, see section 201 of this title and Tables.

The Walsh-Healey and Bacon-Davis Acts, referred to in subsecs. (a), (c) to (e), are defined for purposes of this chapter in section 262 of this title.

[1] *See References in Text note below.*

§253. Compromise and waiver

(a) Compromise of certain existing claims under the Fair Labor Standards Act of 1938, the Walsh-Healey Act, or the Bacon-Davis Act; limitations

Any cause of action under the Fair Labor Standards Act of 1938, as amended [29 U.S.C. 201 et seq.], the Walsh-Healey Act, or the Bacon-Davis Act,[1] which accrued prior to May 14, 1947, or any action (whether instituted prior to or on or after May 14, 1947) to enforce such a cause of action, may hereafter be compromised in whole or in part, if there exists a bona fide dispute as to the amount payable by the employer to his employee; except that no such action or cause of action may be so compromised to the extent that such compromise is based on an hourly wage rate less than the minimum required under such Act, or on a payment for overtime at a rate less than one and one-half times such minimum hourly wage rate.

(b) Waiver of liquidated damages under Fair Labor Standards Act of 1938

Any employee may hereafter waive his right under the Fair Labor Standards Act of 1938, as amended [29 U.S.C. 201 et seq.], to liquidated damages, in whole or in part, with respect to activities engaged in prior to May 14, 1947.

(c) Satisfaction

Any such compromise or waiver, in the absence of fraud or duress, shall, according to the terms thereof, be a complete satisfaction of such cause of action and a complete bar to any action based on such cause of action.

(d) Retroactive effect of section

The provisions of this section shall also be applicable to any compromise or waiver heretofore so made or given.

(e) "Compromise" defined

As used in this section, the term "compromise" includes "adjustment", "settlement", and "release".

(May 14, 1947, ch. 52, §3, 61 Stat. 86.)

Editorial Notes

References in Text

The Fair Labor Standards Act of 1938, as amended, referred to in subsecs. (a) and (b), is act June 25, 1938, ch. 676, 52 Stat. 1060, which is classified generally to chapter 8 (§201 et seq.) of this title. For complete classification of this Act to the Code, see section 201 of this title and Tables.

The Walsh-Healey and Bacon-Davis Acts, referred to in subsec. (a), are defined for purposes of this chapter in section 262 of this title.

[1] *See References in Text note below.*

§254. Relief from liability and punishment under the Fair Labor Standards Act of 1938, the Walsh-Healey Act, and the Bacon-Davis Act for failure to pay minimum wage or overtime compensation

(a) Activities not compensable

Except as provided in subsection (b), no employer shall be subject to any liability or punishment under the Fair Labor Standards Act of 1938, as amended [29 U.S.C. 201 et seq.], the Walsh-Healey Act, or the Bacon-Davis Act,[1] 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 any of the following activities of such employee engaged in on or after May 14, 1947—

(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, and

(2) activities which are preliminary to or postliminary to said 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. For purposes of this subsection, the use of an employer's vehicle for travel by an employee and activities performed by an employee which are incidental to the use of such vehicle for commuting shall not be considered part of the employee's principal activities if the use of such vehicle for travel is within the normal commuting area for the employer's business or establishment and the use of the employer's vehicle is subject to an agreement on the part of the employer and the employee or representative of such employee.

(b) Compensability by contract or custom

Notwithstanding the provisions of subsection (a) which relieve an employer from liability and punishment with respect to any activity, the employer shall not be so relieved if such activity is compensable by either—

(1) an express provision of a written or nonwritten contract in effect, at the time of such activity, between such employee, his agent, or collective-bargaining representative and his employer; or

(2) a custom or practice in effect, at the time of such activity, at the establishment or other place where such employee is employed, covering such activity, not inconsistent with a written or nonwritten contract, in effect at the time of such activity, between such employee, his agent, or collective-bargaining representative and his employer.

(c) Restriction on activities compensable under contract or custom

For the purposes of subsection (b), an activity shall be considered as compensable under such contract provision or such custom or practice only when it is engaged in during the portion of the day with respect to which it is so made compensable.

(d) Determination of time employed with respect to activities

In the application of the minimum wage and overtime compensation provisions of the Fair Labor Standards Act of 1938, as amended [29 U.S.C. 201 et seq.], of the Walsh-Healey Act, or of the Bacon-Davis Act,[1] in determining the time for which an employer employs an employee with respect to walking, riding, traveling, or other preliminary or postliminary activities described in subsection (a) of this section, there shall be counted all that time, but only that time, during which the employee engages in any such activity which is compensable within the meaning of subsections (b) and (c) of this section.

(May 14, 1947, ch. 52, §4, 61 Stat. 86; Pub. L. 104–188, [title II], §2102, Aug. 20, 1996, 110 Stat. 1928.)

Editorial Notes

References in Text

The Fair Labor Standards Act of 1938, as amended, referred to in subsecs. (a) and (d), is act June 25, 1938, ch. 676, 52 Stat. 1060, which is classified generally to chapter 8 (§201 et seq.) of this title. For complete classification of this Act to the Code, see section 201 of this title and Tables.

The Walsh-Healey and Bacon-Davis Acts, referred to in subsecs. (a) and (d), are defined for purposes of this chapter in section 262 of this title.

Amendments

1996—Subsec. (a). Pub. L. 104–188 in closing provisions inserted at end "For purposes of this subsection, the use of an employer's vehicle for travel by an employee and activities performed by an employee which are incidental to the use of such vehicle for commuting shall not be considered part of the employee's principal activities if the use of such vehicle for travel is within the normal commuting area for the employer's business or establishment and the use of the employer's vehicle is subject to an agreement on the part of the employer and the employee or representative of such employee."

Statutory Notes and Related Subsidiaries

Effective Date of 1996 Amendment

Pub. L. 104–188, [title II], §2103, Aug. 20, 1996, 110 Stat. 1928, provided that: "The amendment made by section 2101 [probably means section 2102 of Pub. L. 104–188, amending this section] shall take effect on the date of the enactment of this Act [Aug. 20, 1996] and shall apply in determining the application of section 4 of the Portal-to-Portal Act of 1947 [this section] to an employee in any civil action brought before such date of enactment but pending on such date."

[1] *See References in Text note below.*

§255. Statute of limitations

Any action commenced on or after May 14, 1947, to enforce any cause of action for unpaid minimum wages, unpaid overtime compensation, or liquidated damages, under the Fair Labor Standards Act of 1938, as amended [29 U.S.C. 201 et seq.], the Walsh-Healey Act, or the Bacon-Davis Act[1]—

(a) if the cause of action accrues on or after May 14, 1947—may be commenced within two years after the cause of action accrued, and every such action shall be forever barred unless commenced within two years after the cause of action accrued, except that a cause of action arising out of a willful violation may be commenced within three years after the cause of action accrued;

(b) if the cause of action accrued prior to May 14, 1947—may be commenced within whichever of the following periods is the shorter: (1) two years after the cause of action accrued, or (2) the period prescribed by the applicable State statute of limitations; and, except as provided in paragraph (c), every such action shall be forever barred unless commenced within the shorter of such two periods;

(c) if the cause of action accrued prior to May 14, 1947, the action shall not be barred by paragraph (b) if it is commenced within one hundred and twenty days after May 14, 1947 unless at the time commenced it is barred by an applicable State statute of limitations;

(d) with respect to any cause of action brought under section 216(b) of this title against a State or a political subdivision of a State in a district court of the United States on or before April 18, 1973, the running of the statutory periods of limitation shall be deemed suspended during the period beginning with the commencement of any such action and ending one hundred and eighty days after the effective date of the Fair Labor Standards Amendments of 1974, except that such suspension shall not be applicable if in such action judgment has been entered for the defendant on the grounds other than State immunity from Federal jurisdiction.

(May 14, 1947, ch. 52, §6, 61 Stat. 87; Pub. L. 89–601, title VI, §601(b), Sept. 23, 1966, 80 Stat. 844; Pub. L. 93–259, §6(d)(2)(A), Apr. 8, 1974, 88 Stat. 61.)

Editorial Notes

References in Text

The Fair Labor Standards Act of 1938, as amended, referred to in text, is act June 25, 1938, ch. 676, 52 Stat. 1060, which is classified generally to chapter 8 (§201 et seq.) of this title. For complete classification of this Act to the Code, see section 201 of this title and Tables.

The Walsh-Healey and Bacon-Davis Acts, referred to in text, are defined for purposes of this chapter in section 262 of this title.

The effective date of the Fair Labor Standards Amendments of 1974, referred to in subsec. (d), means May 1, 1974, except as otherwise specifically provided, under provisions of section 29(a) of Pub. L. 93–259, set out as an Effective Date of 1974 Amendment note under section 202 of this title.

Amendments

1974—Subsec. (d). Pub. L. 93–259 added subsec. (d).

1966—Subsec. (a). Pub. L. 89–601 inserted provision allowing causes of action arising out of willful violations to be commenced within three years after the cause of action accrued.

Statutory Notes and Related Subsidiaries

Effective Date of 1974 Amendment

Amendment by Pub. L. 93–259 effective May 1, 1974, see section 29(a) of Pub. L. 93–259, set out as a note under section 202 of this title.

Effective Date of 1966 Amendment

Amendment by Pub. L. 89–601 effective Feb. 1, 1967, except as otherwise provided, see section 602 of Pub. L. 89–601, set out as a note under section 203 of this title.

Rules, Regulations, and Orders Promulgated With Regard to 1966 Amendments

Secretary authorized to promulgate necessary rules, regulations, or orders on and after the date of the enactment of Pub. L. 89–601, Sept. 23, 1966, with regard to the amendments made by Pub. L. 89–601, see section 602 of Pub. L. 89–601, set out as a note under section 203 of this title.

[1] *See References in Text note below.*

§256. Determination of commencement of future actions

In determining when an action is commenced for the purposes of section 255 of this title, an action commenced on or after May 14, 1947 under the Fair Labor Standards Act of 1938, as amended [29 U.S.C. 201 et seq.], the Walsh-Healey Act, or the Bacon-Davis Act,[1] shall be considered to be commenced on the date when the complaint is filed; except that in the case of a collective or class action instituted under the Fair Labor Standards Act of 1938, as amended, or the Bacon-Davis Act,[1] it shall be considered to be commenced in the case of any individual claimant—

(a) on the date when the complaint is filed, if he is specifically named as a party plaintiff in the complaint and his written consent to become a party plaintiff is filed on such date in the court in which the action is brought; or

(b) if such written consent was not so filed or if his name did not so appear—on the subsequent date on which such written consent is filed in the court in which the action was commenced.

(May 14, 1947, ch. 52, §7, 61 Stat. 88.)

Editorial Notes

References in Text

The Fair Labor Standards Act of 1938, as amended, referred to in text, is act June 25, 1938, ch. 676, 52 Stat. 1060, which is classified generally to chapter 8 (§201 et seq.) of this title. For complete classification of this Act to the Code, see section 201 of this title and Tables.

The Walsh-Healey and Bacon-Davis Acts, referred to in text, are defined for purposes of this chapter in section 262 of this title.

[1] *See References in Text note below.*

§257. Pending collective and representative actions

The statute of limitations prescribed in section 255(b) of this title shall also be applicable (in the case of a collective or representative action commenced prior to May 14, 1947 under the Fair Labor Standards Act of 1938, as amended [29 U.S.C. 201 et seq.]) to an individual claimant who has not been specifically named as a party plaintiff to the action prior to the expiration of one hundred and twenty days after May 14, 1947. In the application of such statute of limitations such action shall be considered to have been commenced as to him when, and only when, his written consent to become a party plaintiff to the action is filed in the court in which the action was brought.

(May 14, 1947, ch. 52, §8, 61 Stat. 88.)

Editorial Notes

References in Text

The Fair Labor Standards Act of 1938, as amended, referred to in text, is act June 25, 1938, ch. 676, 52 Stat. 1060, as amended, which is classified generally to chapter 8 (§201 et seq.) of this title. For complete classification of this Act to the Code, see section 201 of this title and Tables.

§258. Reliance on past administrative rulings, etc.

In any action or proceeding commenced prior to or on or after May 14, 1947 based on any act or omission prior to May 14, 1947, no employer shall be subject to any liability or punishment for or on account of the failure of the employer to pay minimum wages or overtime compensation under the Fair Labor Standards Act of 1938, as amended [29 U.S.C. 201 et seq.], the Walsh-Healey Act, or the Bacon-Davis Act,[1] if he pleads and proves that the act or omission complained of was in good faith in conformity with and in reliance on any administrative regulation, order, ruling, approval, or interpretation, of any agency of the United States, or any administrative practice or enforcement policy of any such agency with respect to the class of employers to which he belonged. Such a defense, if established, shall be a bar to the action or proceeding, notwithstanding that after such act or omission, such administrative regulation, order, ruling, approval, interpretation, practice, or enforcement policy is modified or rescinded or is determined by judicial authority to be invalid or of no legal effect.

(May 14, 1947, ch. 52, §9, 61 Stat. 88.)

Editorial Notes

References in Text

The Fair Labor Standards Act of 1938, as amended, referred to in text, is act June 25, 1938, ch. 676, 52 Stat. 1060, which is classified generally to chapter 8 (§201 et seq.) of this title. For complete classification of this Act to the Code, see section 201 of this title and Tables.

The Walsh-Healey and Bacon-Davis Acts, referred to in text, are defined for purposes of this chapter in section 262 of this title.

[1] *See References in Text note below.*

§259. Reliance in future on administrative rulings, etc.

(a) In any action or proceeding based on any act or omission on or after May 14, 1947, no employer shall be subject to any liability or punishment for or on account of the failure of the employer to pay minimum wages or overtime compensation under the Fair Labor Standards Act of 1938, as amended [29 U.S.C. 201 et seq.], the Walsh-Healey Act, or the Bacon-Davis Act,[1] if he pleads and proves that the act or omission complained of was in good faith in conformity with and in reliance on any written administrative regulation, order, ruling, approval, or interpretation, of the agency of the United States specified in subsection (b) of this section, or any administrative practice or enforcement policy of such agency with respect to the class of employers to which he belonged. Such a defense, if established, shall be a bar to the action or proceeding, notwithstanding that after such act or omission, such administrative regulation, order, ruling, approval, interpretation, practice, or enforcement policy is modified or rescinded or is determined by judicial authority to be invalid or of no legal effect.

(b) The agency referred to in subsection (a) shall be—

(1) in the case of the Fair Labor Standards Act of 1938, as amended [29 U.S.C. 201 et seq.]—the Administrator of the Wage and Hour Division of the Department of Labor;

(2) in the case of the Walsh-Healey Act—the Secretary of Labor, or any Federal officer utilized by him in the administration of such Act; and

(3) in the case of the Bacon-Davis Act[1]—the Secretary of Labor.

(May 14, 1947, ch. 52, §10, 61 Stat. 89.)

Editorial Notes

References in Text

The Fair Labor Standards Act of 1938, as amended, referred to in text, is act June 25, 1938, ch. 676, 52 Stat. 1060, which is classified generally to chapter 8 (§201 et seq.) of this title. For complete classification of this Act to the Code, see section 201 of this title and Tables.

The Walsh-Healey and Bacon-Davis Acts, referred to in text, are defined for purposes of this chapter in section 262 of this title.

Executive Documents

Transfer of Functions

Functions relating to enforcement and administration of equal pay provisions vested by subsec. (b)(1) of this section in Administrator of Wage and Hour Division of Department of Labor transferred to Equal Employment Opportunity Commission by Reorg. Plan No. 1 of 1978, §1, 43 F.R. 19807, 92 Stat. 3781, set out in the Appendix to Title 5, Government Organization and Employees, effective Jan. 1, 1979, as provided by section 1–101 of Ex. Ord. No. 12106, Dec. 28, 1978, 44 F.R. 1053.

For transfer of functions of other officers, employees, and agencies of Department of Labor, with certain exceptions, to Secretary of Labor, with power to delegate, see Reorg. Plan No. 6, of 1950, §§1, 2, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

[1] *See References in Text note below.*

§260. Liquidated damages

In any action commenced prior to or on or after May 14, 1947 to recover unpaid minimum wages, unpaid overtime compensation, or liquidated damages, under the Fair Labor Standards Act of 1938, as amended [29 U.S.C. 201 et seq.], if the employer shows to the satisfaction of the court that the act or omission giving rise to such action was in good faith and that he had reasonable grounds for believing that his act or omission was not a violation of the Fair Labor Standards Act of 1938, as amended, the court may, in its sound discretion, award no liquidated damages or award any amount thereof not to exceed the amount specified in section 216 of this title.

(May 14, 1947, ch. 52, §11, 61 Stat. 89; Pub. L. 93–259, §6(d)(2)(B), Apr. 8, 1974, 88 Stat. 62.)

Editorial Notes

References in Text

The Fair Labor Standards Act of 1938, as amended, referred to in text, is act June 25, 1938, ch. 676, 52 Stat. 1060, as amended, which is classified generally to chapter 8 (§201 et seq.) of this title. For complete classification of this Act to the Code, see section 201 of this title and Tables.

Amendments

1974—Pub. L. 93–259 substituted "section 216 of this title" for "section 216(b) of this title".

Statutory Notes and Related Subsidiaries

Effective Date of 1974 Amendment

Amendment by Pub. L. 93–259 effective May 1, 1974, see section 29(a) of Pub. L. 93–259, set out as a note under section 202 of this title.

§261. Applicability of "area of production" regulations

No employer shall be subject to any liability or punishment under the Fair Labor Standards Act of 1938, as amended [29 U.S.C. 201 et seq.], 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 an activity engaged in by such employee prior to December 26, 1946, if such employer—

(1) was not so subject by reason of the definition of an "area of production", by a regulation of the Administrator of the Wage and Hour Division of the Department of Labor, which regulation was applicable at the time of performance of the activity even though at that time the regulation was invalid; or

(2) would not have been so subject if the regulation signed on December 18, 1946 (Federal Register, Vol. 11, p. 14648) had been in force on and after October 24, 1938.

(May 14, 1947, ch. 52, §12, 61 Stat. 89.)

Editorial Notes

References in Text

The Fair Labor Standards Act of 1938, as amended, referred to in text, is act June 25, 1938, ch. 676, 52 Stat. 1060, as amended, which is classified generally to chapter 8 (§201 et seq.) of this title. For complete classification of this Act to the Code, see section 201 of this title and Tables.

Executive Documents

Transfer of Functions

For transfer of functions of other officers, employees, and agencies of Department of Labor, with certain exceptions, to Secretary of Labor, with power to delegate, see Reorg. Plan No. 6, of 1950, §§1, 2, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

§262. Definitions

(a) When the terms "employer", "employee", and "wage" are used in this chapter in relation to the Fair Labor Standards Act of 1938, as amended [29 U.S.C. 201 et seq.], they shall have the same meaning as when used in such Act of 1938.

(b) When the term "employer" is used in this chapter in relation to the Walsh-Healey Act or Bacon-Davis Act [1] it shall mean the contractor or subcontractor covered by such Act.

(c) When the term "employee" is used in this chapter in relation to the Walsh-Healey Act or the Bacon-Davis Act [1] it shall mean any individual employed by the contractor or subcontractor covered by such Act in the performance of his contract or subcontract.

(d) The term "Wash-Healey Act" [2] means the Act entitled "An Act to provide conditions for the purchase of supplies and the making of contracts by the United States, and for other purposes", approved June 30, 1936 (49 Stat. 2036), as amended; [1] and the term "Bacon-Davis Act" means the Act entitled "An Act to amend the Act approved March 3, 1931, relating to the rate of wages for laborers and mechanics employed by contractors and subcontractors on public buildings", approved August 30, 1935 (49 Stat. 1011), as amended.[1]

(e) As used in section 255 of this title the term "State" means any State of the United States or the District of Columbia or any Territory or possession of the United States.

(May 14, 1947, ch. 52, §13, 61 Stat. 90.)

Editorial Notes

References in Text

The Fair Labor Standards Act of 1938, as amended, referred to in subsec. (a), is act June 25, 1938, ch. 676, 52 Stat. 1060, which is classified generally to chapter 8 (§201 et seq.) of this title. For complete classification of this Act to the Code, see section 201 of this title and Tables.

The Walsh-Healey Act and the Act entitled "An Act to provide conditions for the purchase of supplies and the making of contracts by the United States, and for other purposes", approved June 30, 1936, referred to in subsecs. (b) to (d), are act June 30, 1936, ch. 881, 49 Stat. 2036, which was classified principally to sections 35 to 45 of former Title 41, Public Contracts, and was substantially repealed and restated as chapter 65 (§6501 et seq.) of Title 41, Public Contracts, by Pub. L. 111–350, §§3, 7(b), Jan. 4, 2011, 124 Stat. 3677, 3855. For complete classification of this Act to the Code, see Short Title of 1936 Act note set out under section 101 of Title 41 and Tables. For disposition of sections of former Title 41, see Disposition Table preceding section 101 of Title 41.

The "Bacon-Davis Act", as defined for purposes of this chapter in subsec. (d), is act Aug. 30, 1935, ch. 825, 49 Stat. 1011, which generally amended act Mar. 3, 1931, ch. 411, 46 Stat. 1494, popularly known as the "Davis-Bacon Act", and which was classified to sections 276a to 276a–6 of former Title 40, Public Buildings, Property, and Works. Sections 276a to 276a–6 of former Title 40 were repealed and reenacted as sections 3141–3144, 3146, and 3147 of Title 40, Public Buildings, Property, and Works, by Pub. L. 107–217, §§1, 6(b), Aug. 21, 2002, 116 Stat. 1062, 1304.

[1] *See References in Text note below.*

[2] *So in original. Probably should be "Walsh-Healey Act".*

ployees and assistants including research employees as it deems necessary.

Members of the Commission shall serve without compensation but shall be reimbursed for actual expenses incurred in the performance of their duties.

904. Review of and advice to Department of Business and Economic Development—Reports from Department—Studies—Recommendations.] § 4. The Commission shall review the activities of and advise the Department of Business and Economic Development and shall receive quarterly reports from the Department. The Commission shall also consider programs to further the economic development of Illinois. The Commission shall study the laws and programs of other States with respect to economic development and the encouragement of business and industry and shall confer with government officials and with representatives of business and industry and any other persons or associations interested in the promotion of economic development. The Commission shall make recommendations concerning legislation affecting the economic development of Illinois.

Amended by P.A. 76–855, § 1, eff. Aug. 19, 1969.

905. Report of findings and recommendations.] § 5. The Commission shall make a report of its findings and recommendations to the General Assembly not later than March 1 of each odd numbered year.

Formerly § 4. Renumbered § 5 and amended by P.A. 76–855, § 1, eff. Aug. 19, 1969.

[§ 5. Appropriation.]

MINIMUM WAGE LAW

AN ACT to provide for the establishment of a fair labor minimum wage in employments in the State of Illinois, and providing penalties for violations thereof.

P.A. 77–1451, eff. Sept. 6, 1971.

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

1001. Short title.] § 1. This Act is known and may be cited as the "Minimum Wage Law".

1002. Legislative policy.] § 2. The General Assembly finds that the existence in industries, trades or business, or branches thereof, including offices, mercantile establishments and all other places of employment in the State of Illinois covered by this Act, of conditions detrimental to the maintenance of the minimum standard of living necessary for the health, efficiency and general well-being of workers, leads to labor disputes, and places burdens on the State, and all other subordinate political bodies thereof, to assist and supply necessary moneys and goods to workers and their families to aid them to exist on a minimum budget for their needs, and thus places an unnecessary burden on the taxpayers of this State. Therefore, it is the policy of this Act to establish a minimum wage standard for workers at a level consistent with their health, efficiency and general well-being; to safeguard such minimum wage against the unfair competition of wage and hour standards which do not provide such adequate standards of living; and to sustain purchasing power and increase employment opportunities.

It is against public policy for an employer to pay to his employees an amount less than that fixed by this Act. Payment of any amount less than herein fixed is an unreasonable and oppressive wage, and less than sufficient to meet the minimum cost of living necessary for health. Any contract, agreement or understanding for or in relation to such unreasonable and oppressive wage for any employment covered by this Act is void.

1003. Definitions.] § 3. As used in this Act:

(a) "Director" means the Director of the Department of Labor, and "Department" means the Department of Labor.

(b) "Wages" means compensation due to an employee by reason of his employment, including allowances determined by the Director in accordance with the provisions of this Act, for gratuities and, when furnished by the employer, for meals and lodging actually used by the employee.

(c) "Employer" includes any individual, partnership, association, corporation, business trust, governmental or quasi-governmental body, or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee, for which one or more persons are gainfully employed on some day within a calendar year. An employer is subject to this Act in a calendar year on and after the first day in such calendar year in which he employs one or more persons, and for the following calendar year.

(d) "Employee" includes any individual permitted to work by an employer in an occupation, but does not include any individual permitted to work:

(1) For an employer employing fewer than five full-time employees;

(2) As an employee employed in agriculture (A) if such employee is employed by an employer who did not, during any calendar quarter during the preceding calendar year, use more than 500 man-days of agricultural labor, (B) if such employee is the parent, spouse or child, or other member of the employer's immediate family, (C) if such employee (i) is employed as a hand harvest laborer and is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment, (ii) commutes daily from his permanent residence to the farm on which he is so employed, and (iii) has been employed in agriculture less than 13 weeks during the preceding calendar year, (D) if such employee (other than employee described in clause (C) of this subparagraph (i) is 16 years of age or under and is employed as a hand harvest laborer, is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment, (ii) is employed on the same farm as his parent or person standing in the place of his parent, and (iii) is paid at the same piece rate as employees over 16 are paid on the same farm.

(3) In domestic service in or about a private home;

(4) As an outside salesman;

(5) As a member of a religious corporation organization; or

(6) Any usher, candy counter attendant, ticket-taker and cashier employed by an establishment which is a motion picture theatre.

(7) Any employee who is covered under the provisions of the Fair Labor Standards Act of 1938, as heretofore or hereafter amended.[1]

The above exclusions from the term "employee" may be further defined by regulations of the Director.

(e) "Occupation" means an industry, trade, business or class of work in which employees are gainfully employed.

(f) "Gratuities" means voluntary monetary contributions by an employee from a guest, patron or customer in connection with services rendered;

(g) "Outside salesman" means an employee, the major portion of whose work is performed away from a central place of business and the major portion of whose compensation consists of commissions on sales.

1 Chapter 29, § 201 et seq.

1004. Establishment of minimum wage—Sex discrimination—Allowance for gratuities.] § 4. (a) On and after January 1, 1972, every employer shall pay to each of his employees in every occupation, wages of not less than $1.40 per hour, or in the case of employees under 19 years of age wages of not less than $1.15 per hour, except as provided in Sections 5 and 6 of this Act.[1] On and after January 1, 1973, every employer shall pay to each of his employees in every occupation, wages of not less than $1.60 per hour, or in the case of employees under 19 years of age wages of not less than $1.25 per hour, except as provided in Sections 5 and 6 of this Act.

(b) No employer shall discriminate between employees on the basis of sex by paying wages to employees at a rate less than the rate at which he pays wages to employees of the opposite sex for the same or substantially similar work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions, except where such payment is made pursuant to (1) a seniority system; (2) a merit system; (3) a system which measures earnings by quantity or quality of production; or (4) a differential based on any other factor other than sex.

(c) Every employer of an employee engaged in an occupation in which gratuities have customarily and usually constituted and have been recognized as part of the remuneration for hire purposes is entitled to an allowance for gratuities as part of the hourly wage rate provided in Section 4, subsection (a) in an amount not to exceed 50% of the applicable minimum wage rate, provided the employee received in gratuities the amount claimed. The Director may require each employer desiring an allowance for gratuities to provide substantial evidence that the amount claimed, which may not exceed 50% of the applicable minimum wage rate, was received by the employee, and no part thereof was returned to the employer.

1 Chapter 48, §§ 1005, 1006.

1005. Wages for individuals whose capacity is impaired by age or physical or mental deficiency.] § 5. The Director may provide by regulation for the employment in any occupation of individuals whose earning capacity is impaired by age, or physical or mental deficiency or injury at such wages lower than the minimum wage rate provided in Section 4, subsection (a),[1] as he may find appropriate to prevent curtailment of opportunities for employment, to avoid undue hardship, and to safeguard the minimum wage rate of this Act, except that no person who maintains a production level within the limits required of other employees may be paid at less than the minimum wage. No employee shall be employed at wages fixed pursuant to this Section except under a special license issued under applicable regulations of the Director.

1 Chapter 48, § 1004(a).

1006. Wages for learners.] § 6. (a) For any occupation, the Director may provide by regulation for the employment in that occupation of learners at such wages lower than the minimum wage provided in Section 4, subsection (a) [1] as the Director may find appropriate to prevent curtailment of opportunities for employment and to safeguard the minimum wage rate of this Act.

(b) Where the Director has provided by regulation for the employment of learners, such regulations are subject to provisions hereinafter set forth and to such additional terms and conditions as may be established in supplemental regulations applicable to the employment of learners in particular industries.

(c) In any occupation, every employer may pay a subminimum wage to learners during their period of learning. However, under no circumstances, except those provided in Section 4, subsection (a), may an employer pay a learner a wage less than $.90 per hour.

(d) No person is deemed a learner in any occupation for which he has completed the required training; and in no case may a person be deemed a learner in that occupation after 6 months of such training, except where the Director finds, after investigation, that for the particular occupation a minimum of proficiency cannot be acquired in 6 months.

1 Chapter 48, § 1004(a).

1007. Authority of director—Investigations—Statements and reports.] § 7. The Director or his authorized representatives have the authority to:

(a) Investigate and gather data regarding the wages, hours and other conditions and practices of employment in any industry subject to this Act, and may enter and inspect such places and such records (and make such transcriptions thereof) at reasonable times during regular business hours, not including lunch time at a restaurant, question such employees, and investigate such facts, conditions, practices or matters as he may deem necessary or appropriate to determine whether any person has violated any provision of this Act, or which may aid in the enforcement of this Act.

(b) Require from any employer full and correct statements and reports in writing, including sworn statements, at such times as the Director may deem necessary, of the wages, hours, names, addresses, and other information pertaining to his employees as he may deem necessary for the enforcement of this Act.

1008. Records — Retention — Contents — Inspection—Sworn statements.] § 8. Every employer subject to any provision of this Act or of any order issued under this Act shall make and keep for a period of not less than 3 years, true and accurate records of the name, address and occupation of each of his employees, the rate of pay, and the amount paid each pay period to each employee, the hours worked each day in each work week by each employee, and such other information and make such reports therefrom to the Director as the Director may by regulation prescribe as necessary or appropriate for the enforcement of the provisions of this Act or of the regulations thereunder. Such records shall be open for inspection or transcription by the Director or his authorized representative at any reasonable time as limited by paragraph (a) of Section 7 of this Act.[1] Every employer shall furnish to the Director or his authorized representative on demand a sworn statement of such records and information upon forms prescribed or approved by the Director. Each worker employed at the learner rate must be designated as such on the payroll record kept by the employer, with the learner's occupation shown.

1 Chapter 48, § 1007(a).

1009. Posting of summary of Act and regulations.] § 9. Every employer subject to any pro-

vision of this Act or of any regulations issued under this Act shall keep a summary of this Act approved by the Director, and copies of any applicable regsuch regulations, posted in a conspicuous and accessible place in or about the premises wherever any person subject to this Act is employed. Employers shall be furnished copies of such summaries and regulations by the State on request without charge.

1010. Regulations—Handicapped workers—Notice and hearing for adoption—Filing—Stay of enforcement.] § 10. (a) The Director shall make and revise administrative regulations, including definitions of terms, as he deems appropriate to carry out the purposes of this Act, to prevent the circumvention or evasion thereof, and to safeguard the minimum wage established by the Act. Regulations governing employment of learners may be issued only after notice and opportunity for public hearing, as provided in subsection (c) of this Section.

(b) In order to prevent curtailment of opportunities for employment, avoid undue hardship, and safeguard the minimum wage rate under this Act, the Director may also issue regulations providing for the employment of handicapped workers at wages lower than the wage rate applicable under this Act, under permits and for such periods of time as specified therein; and providing for the employment of learners at wages lower than the wage rate applicable under this Act. However, such regulation shall not permit lower wages for the handicapped on any basis that is unrelated to such person's ability resulting from his handicap, and such regulation may be issued only after notice and opportunity for public hearing as provided in subsection (c) of this Section.

(c) Prior to the adoption, amendment or repeal of any rule or regulation by the Director under this Act, except regulations which concern only the internal management of the Department of Labor and do not affect any public right provided by this Act, the Director shall give proper notice to persons in any industry or occupation that may be affected by the proposed rule or regulation, and hold a public hearing on his proposed action at which any such affected person, or his duly authorized representative, may attend and testify or present other evidence for or against such proposed rule or regulation. Rules and regulations adopted under this Section shall be filed with the Secretary of State in compliance with "An Act concerning administrative rules", as now or hereafter amended.[1] Such adopted and filed rules and regulations shall become effective 10 days after copies thereof have been mailed by the Department to persons in industries affected thereby at their last known address.

(d) The commencement of proceedings by any person aggrieved by an administrative regulation issued under this Act does not, unless specifically ordered by the Court, operate as a stay of that administrative regulation against other persons. The Court shall not grant any stay of an administrative regulation unless the person complaining of such regulation files in the Court an undertaking with a surety or sureties satisfactory to the Court for the payment to the employees affected by the regulation, in the event such regulation is affirmed, of the amount by which the compensation such employees are entitled to receive under the regulation exceeds the compensation they actually receive while such stay is in effect.

[1] Chapter 110, § 264 et seq.

1011. Violations — Penalties — Discrimination —Penalties—Enforcement.] § 11. (a) Any employer or his agent, or the officer or agent of any private employer who:

(1) Hinders or delays the Director or his authorized representative in the performance of his duties in the enforcement of this Act; or

(2) Refuses to admit the Director or his authorized representative to any place of employment; or

(3) Fails to keep the records required under this Act or to furnish such records required or any information to be furnished under this Act to the Director or his authorized representative upon request; or

(4) Fails to make and preserve any records as required hereunder; or

(5) Falsifies any such record; or

(6) Refuses to make such records available to the Director or his authorized representative; or

(7) Refuses to furnish a sworn statement of such records or any other information required for the proper enforcement of this Act; or

(8) Fails to post a summary of this Act or a copy of any applicable regulation as required by Section 9 of this Act; [1] shall be fined not less than $50, nor more than $200, and each day of such failure to keep the records required under this Act or to furnish such records or information to the Director or his authorized representative or to fail to post information as required herein constitutes a separate offense.

(b) Any employer or his agent, or the officer or agent of any private employer, who pays or agrees to pay to any employee wages at a rate less than the rate applicable under this Act or of any regulation issued under this Act is guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than $50 nor more than $200, or by imprisonment of not less than 10 nor more than 90 days, or both such fine and imprisonment, and each week on any day of which such employee is paid less than the wage rate applicable under this Act constitutes a separate offense.

(c) Any employer or his agent, or the officer or agent of any private employer, who discharges or in any other manner discriminates against any employee because that employee has made a complaint to his employer, or to the Director or his authorized representative, that he has not been paid wages in accordance with the provisions of this Act, or because that employee has caused to be instituted or is about to cause 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 of a misdemeanor and upon conviction thereof, shall be fined not less than $50 nor more than $500.

(d) It is the duty of the Department of Labor to inquire diligently for any violations of this Act, and to institute the action for penalties herein provided, and to enforce generally the provisions of this Act.

[1] Chapter 48, § 1009.

1012. Civil action for underpayment of wages—Costs—Attorneys fees—Action by director.] § 12. (a) If any employee is paid by his employer less than the wage to which he is entitled under the provisions of this Act, he may recover in a civil action the amount of any such underpayments together with costs and such reasonable attorney's fees as may be allowed by the Court, and any agreement between him and his employer to work for less than such wage is no defense to such action.

(b) At the request of any employee paid less than the wage to which he is entitled under the

provisions of this Act, the Director may take 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.

1013. More favorable standards under other laws not amended or rescinded.] § 13. Any standards relating to minimum wages, maximum hours, overtime compensation or other working conditions in effect under any other law of this State on the effective date of this Act which are more favorable to employees than those applicable to such employees under this Act or the regulations issued hereunder, are not amended, rescinded, or otherwise affected by this Act but continue in full force and effect and may be enforced as provided by law unless and until they are specifically superseded by standards more favorable to such employees by operation of or in accordance with regulations issued under this Act.

1014. Collective bargaining rights not affected.] § 14. Nothing in this Act is deemed to interfere with, impede, or in any way diminish the right of employees to bargain collectively with their employers through representatives of their own choosing in order to establish wages or other conditions of work in excess of the applicable minimum standards of the provisions of this Act.

1015. Invalidity of provision or application not to affect remainder.] § 15. If any provision of this Act or the application thereof to any person, employer, occupation or circumstance is held invalid, the remainder of this Act and the application of such provision to other persons, employers, occupations, or circumstances are not affected thereby.

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ing also of . . . in the tipped employee, the gratuity employee and make it very clear that the exemption to pay only 50 percent of the minimum wage applicable to a gratuity employee is only for that period of . . . for which the claim for exemption is made so that employers can't hire a gratuity employee and have him employed at doing something that they could not receive a gratuity for; and I might point out a lot of people have questioned me and say, 'Well, what good is a minimum wage? Does anyone ever collect on it?'. I'd like to point out in 1972 when the Minimum Wage Law passed in Illinois at a $1.40 an hour, $2,636.86 was collected for those employees covered at that time in a six-month period. In 1973, $78,000 . . . $78,809 in penalties in back pay were . . . were paid to employees through the Department of Labor in penalizing the employers that were in violation of this act; and that was in wages in addition to what they were receiving and, yet, under a $1.60 an hour. In 1974, $97,717.54 were collected for the people in Illinois that were not being paid what the law called for, $1.75 an hour. The Department of Labor inspected 17,865 establishments, out of the 154,000 covered establishments of unemployment compensation. Now, this bill will certainly go a long way to insure that the citizens of Illinois are paid a very basic minimum wage. One of the other additions to the law is what we called a Fair Standard Act, which is the Federal Act, and that is that, 'the time and a half provision over 40 hours shall be paid for persons covered by this act, except those who are exempted from the provisions of the act', those that are exempted are employees with a contract to the contrary, the salesmen, mechanics engaged in selling and servicing of automobiles, trailers, and aircraft; and any employer of agriculture or labor with respect to such agriculture employment. Mr. Speaker and members of the House, this is a very important labor matter. Its a very important bill to organize labor, not because they'll benefit by it, but because people who work for a living should have a floor on their wages. Its the only system we know that we could guarantee that the exploitation of those who haven't got the privileges of a lobby, haven't got the privileges of a union representing him, that they would have the opportunity to be guaranteed

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under law a very basic minimum wage; and . . . and I can only say that its very odd some who object to minumum wage for common, ordinary working people seem to have a different feeling when it comes to minimum waged concerning various other professional fees . . . ah . . . professions they belong to. Its a good bill. I ask your support in the name of all those employees out there who do not have union membership, nor union representation or even a voice here in the Legislature, these are the people who are at the bottom of the economic ladder that need your help in support of this bill."

Speaker Redmond: "Representative Tuerk."

Tuerk: "Would the Sponsor yield to a question?"

Speaker Redmond: "He indicates he will."

Tuerk: "Now, how does this bill, Representative Hanahan, compare with Federal minimum wage?"

Hanahan: "In what way, sir?"

Tuerk: "Well, the structure, the amounts."

Hanahan: "Oh, the amount's identical."

Tuerk: "How does this bill compare to your previous bill that was once on the floor?"

Hanahan: "This is the identical bill outside of one word change of the bill that was on Third Reading on May 23rd, it was tabled at midnight, May 23rd; and the change was on a request of the . . . ah . . . gratuity employee organizations that asked for a specific . . . ah . . . change in the word . . . ah . . . from 'hour' to 'period' on pa . . . line 17, page 4, . . . so it replaced the word 'period' with . . . from the word 'hour'."

Tuerk: "Well, I didn't . . ."

Speaker Redmond: "May I have the courtesy to listen to Representative Tuerk and get the responses that he is trying to illicit? I'll call on you."

Tuerk: "I didn't understand that . . . ah . . . one change that was made in the . . . ah . . . previous bill."

Hanahan: "At the request of the Hotel, Restaurant, Motel and Restaurant Employees Association, the . . . the employer groups, they had requested that to insure fairness in the application of the exemption of the 50 percent gratuity exemption that when we were trying to get at

the . . . the employer who was trying to skirt the law by employing, let's say, a waitress to come in at 8:00 o'clock to fold napkins, sweep floors or work in the kitchen, and, yet, only pay 50 percent of the minimum wage to that employee, even though knowing full well that that employee could not receive any gratuities during that interim; so we changed the word . . . the original act called for, 'in the hour for which the claim of exemption is made', and in fairness to them, they persuaded me to change that 'hour' to, 'in the period for which the claim of exemption is made'."

Tuerk: "One final question . . . ah . . . does the Federal Act provide for minimum wage of . . . ah . . . of employers of five or fewer?"

Hanahan: "Fed . . . the Federal Act does not cover interstate employees. This is not the same latitude. If we just followed the Federal Act, we wouldn't need a state law. Everyone would be covered with the Federal Act. We're talking about employees in the lowest employee groups, and that is in the state . . . the interstate employment and the . . ."

Tuerk: "Tom . . ."

Hanahan: ". . . Federal Act does not cover them."

Tuerk: ". . . you haven't answered my question, does the Federal Law provide for minimum wage for employees or employers with five or fewer employees?"

Hanahan: "It does not word its language that way, it words it based on . . . gross sales."

Tuerk: "In other words, this is not identical to the Federal Act."

Hanahan: "No, I never said it did. I said the amounts of money are identical."

Tuerk: "I see. Thank you."

Speaker Redmond: "Representative Totten."

Totten: "Well, thank you, Mr. Speaker, I wondered whether Marquette would ever recognize Notre Dame there for a minute."

Speaker Redmond: "We will when you get a team."

Totten: "I . . . I think we've had our ounce of blood up there in Milwaukee quite a few times. I feel like I was gored over here the way you've . her . . . failed to recognize me, but I want to raise two points of order and I think they're appropriate. The Sponsor has indicated that

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Mr. Collins here? Take it out of the record. Mr. Hanahan, for what purpose do you arise?"

Hanahan: "Yes, 3318, Mr. Speaker, you skipped it. You went from 3313 to 3322."

Speaker Shea: "Oh, I've got that marked 'held'."

Hanahan: "For who?"

Speaker Shea: "On the order of House Bills Third Reading appears House Bill 3318. Read the Bill."

Clerk O'Brien: "House Bill 3318. A Bill for an act to amend the minimum wage law. Third Reading of the Bill."

Speaker Shea: "For what purpose does the Gentleman from Cook, Mr. Walsh, seek recognition?"

Walsh: "For the purpose of finding out if you're calling things in the proper sequence, Mr. Speaker. We're on House Bills Third Reading and I'm looking for the expiration date of..."

Speaker Shea: "I'm calling them in numerical order starting with House Bill 1815 and going right down the list, Mr. Walsh."

Walsh: "All right. Then my observation, Mr. Speaker, that you've been calling them by expiration date, may I suggest that's a better way to call them because we're nearing the end of the Session.

Speaker Shea: "Well, I'm calling them right down the Calendar." Proceed, Mr. Hanahan."

Hanahan: "Mr. Speaker, Members of the House, House Bill 3318 is the catch-up minimum wage bill that had we not gotten into a constitutional question on whether or not the Amendatory Veto of the Governor had taken precedent and needed a three-fifths vote in the House and the Senate in order to change an effective date this Bill would not even be before this House because we have prior to this already passed this Bill and...in fact this Bill is just a makeup bill to catchup and make us even with federal laws that cover most employees in Illinois. Now we've passed a lot of bills in this House that was going to need a minimum wage increase in order for some of the constituents back home to pay the bills and pay the high interest rate that's going to take place if they ever need a mortgage. I could say that the Minimum Wage Law of Illinois, first of all, covers about 90,000

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employers in Illinois and it affects about 200,000 employees that we're now going to say that in 19...July 1st 1976 that their rate of minimum pay would be $2.30 an hour; and for those under 18 years of it'll be a $1.95 an hour. We have a learner provision for training and that is a subminimum rate of a $1.50 an hour that by approval of the Department of Labor a employer can request that kind of allowance. In the tip credit we continue with the 50% credit for those employees such as cab drivers, waitresses, busboys and bellhops, those that would depend primarily on tip credit as being a primary part of their earnings that 50% of their earnings would be credited with tips. So that the minimum wage for that type of employee would really and truly be a $1.15 an hour as long as they were being tipped at the rate of at a $1.15 for the work period that they were covered by. In the areas of employment and time-and-a-half provisions to make our minimum wage law a fair standard act which is what the federal act is called we come into the overtime provisions and 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. Those would be governmental employees would be completely eliminated. Automobile, truck and farm implement salesmen and mechanics and salesmen of trailer boats of aircraft would be exempt and agriculture employees would be exempt from coverage of the overtime provisions. There'd be also some exemptions for the service...for the custodial employees and the personnel working in hotel-motel industries that would comply with the federal act of 46...44...45 hours this year and self destruct next May 1st. The same thing is true of those working in cafeteria type of employment. For those that are in the food service restaurant employment it would be 46 hours before they receive time-and-a-half for overtime. For those people working in the movie theatre industry and the motion picture industry it would be 45 hours before time-and-a-half takes place for their overtime. It's a good Bill. It's a Labor Bill. It's a Bill that labor is very proud to stand up for because it doesn't really affect our Members. No union members needs a minimum wage law for protection but we come before the

negligence or other wrongful act, but not including intentional torts, is also subject to the Malpractice Arbitration Act, enacted by the Seventy Ninth General Assembly.

Section 16. Section 155.20 is added to the "Illinois Insurance Code", approved June 29, 1937, as amended, the added Section to read as follows:

(Ch. 73, new par. 768.20)

§ 155.20. All final arbitration decisions rendered in relation to disputes or controversies arising out of injuries allegedly caused by reason of hospital or health care provider malpractice shall be recognized by any insurance company doing business in the State of Illinois and all findings of facts relating to liability and awards of damages in relation thereto which are a part of the final arbitration decision shall be binding on such insurance companies.

Section 17. Section 155.21 is added to the "Illinois Insurance Code", approved June 29, 1937, as amended, the added Section to read as follows:

(Ch. 73, new par. 768.21)

§ 155.21. A company writing medical liability insurance shall not refuse to offer insurance to a physician, hospital or other health care provider on the grounds that the physician, hospital or health care provider has entered or intends to enter an arbitration agreement pursuant to the "Malpractice Arbitration Act".

As used in this Section, medical liability insurance means insurance on risks based upon negligence by a physician, hospital or other health care provider.

Section 18. This Act takes effect 30 days after it becomes a law.

Passed in the General Assembly June 21, 1976.

Approved August 20, 1976.

PUBLIC ACT 79-1436.

EMPLOYMENT.

MINIMUM WAGE LAW — MINIMUMS INCREASED — EFFECTIVE DATE.

(House Bill No. 3318. Approved August 22, 1976.)

AN ACT to amend Sections 3, 4 and 6 of and to add Section 4a to the "Minimum Wage Law", approved September 6, 1971, as amended.

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

Section 1. Sections 3, 4 and 6 of the "Minimum Wage Law", approved September 6, 1971, as amended, are amended, and Section 4a is added thereto, the amended and added Sections to read as follows:

(Ch. 48, par. 1003)

§ 3. As used in this Act:

(a) "Director" means the Director of the Department of Labor, and "Department" means the Department of Labor.

(b) "Wages" means compensation due to an employee by reason of his employment, including allowances determined by the Director in accordance with the provisions of this Act, for gratuities and, when furnished by the employer, for meals and lodging actually used by the employee.

(c) "Employer" includes any individual, partnership, association, corporation, business trust, governmental or quasi-governmental body, or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee, for which one or more persons are gainfully employed on some day within a calendar year. An employer is subject to this Act in a calendar year on and after the first day in such calendar year in which he employs one or more persons, and for the following calendar year.

(d) "Employee" includes any individual permitted to work by an employer in an occupation, but does not include any individual permitted to work:

(1) For an employer employing fewer than *4* ~~five~~ ~~full~~ ~~time~~ employees *exclusive of the employer's parent, spouse or child or other members of his immediate family;*

(2) As an employee employed in agriculture (A) if such employee is employed by an employer who did not, during any calendar quarter during the preceding calendar year, use more than 500 man-days of agricultural labor, (B) if such employee is the parent, spouse or child, or other member of the employer's immediate family, (C) if such employee (i) is employed as a hand harvest laborer and is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment, (ii) commutes daily from his permanent residence to the farm on which he is so employed, and (iii) has been employed in agriculture less than 13 weeks during the preceding calendar year, (D) if such employee (other than employee described in clause (C) of this subparagraph (i) is 16 years of age or under and is employed as a hand harvest laborer, is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment, (ii) is employed on the same farm as his parent or person standing in the place of his parent, and (iii) is paid at the same piece rate as employees over 16 are paid on the same farm.

Changes or additions indicated by *italics* deletions by ~~strikeout.~~

(3) In domestic service in or about a private home;
(4) As an outside salesman;
(5) As a member of a religious corporation or organization; or
~~(6) Any usher, candy counter attendant, ticket taker and cashier employed by an establishment which is a motion picture theatre.~~
~~(7) Any employee who is covered under the provisions of the Fair Labor Standards Act of 1938, as heretofore or hereafter amended.~~
The above exclusions from the term "employee" may be further defined by regulations of the Director.
(e) "Occupation" means an industry, trade, business or class of work in which employees are gainfully employed.
(f) "Gratuities" means voluntary monetary contributions by an employee from a guest, patron or customer in connection with services rendered;
(g) "Outside salesman" means an employee, the major portion of whose work is performed away from a central place of business and the major portion of whose compensation consists of commissions on sales.
(Ch. 48, par. 1004)
§ 4. (a) Every employer shall pay to each of his employees in every occupation, wages of not less than $1.75 per hour, or in the case of employees under 18 years of age wages of not less than $1.40 per hour, except as provided in Sections 5 and 6 of this Act. On and after January 1, 1975, every employer shall pay to each of his employees in every occupation, wages of not less than $1.90 per hour, or in the case of employees under 18 years of age wages of not less than $1.55 per hour, and on and after *July* ~~January~~ 1, 1976, every employer shall pay to each of his employees in every occupation, wages of not less than *$2.20* ~~$2.10~~ per hour or in the case of employees under 18 years of age wages of not less than $1.75 per hour, *and on and after January 1, 1977, every employer shall pay to each of his employees in every occupation wages of not less than $2.30 per hour or in the case of employees under 18 years of age wages of not less than $1.95 per hour, except that full time students employed in motion picture theaters shall be paid not less than $1.95 per hour and* except as provided in Sections 5 and 6 of this Act. ~~However, at no time shall the minimum hourly wages established by this Act exceed those specified under federal law.~~
(b) No employer shall discriminate between employees on the basis of sex by paying wages to employees at a rate less than the rate at which he pays wages to employees of the opposite sex for the same or substantially similar work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions, except where such payment is made pursuant to (1) a seniority system; (2) a merit system; (3) a system which measures earnings by quantity or quality of production; or (4) a

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Changes or additions indicated by *italics* deletions by ~~strikeout~~.

differential based on any other factor other than sex.

(c) Every employer of an employee engaged in an occupation in which gratuities have customarily and usually constituted and have been recognized as part of the remuneration for hire purposes is entitled to an allowance for gratuities as part of the hourly wage rate provided in Section 4, subsection (a) in an amount not to exceed 50% of the applicable minimum wage rate, provided the employee received in gratuities the amount claimed. The Director *shall* ~~may~~ require each employer desiring an allowance for gratuities to provide substantial evidence that the amount claimed, which may not exceed 50% of the applicable minimum wage rate, was received by the employee *in the period for which the claim of exemption is made*, and no part thereof was returned to the employer.

(Ch. 48, new par. 1004a)

§ 4a. (1) Except as otherwise provided in this Section, no employer shall employ any of his employees for a workweek of more than 40 hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed. However, employees in restaurants shall receive compensation of not less than 1½ times the regular rate after 46 hours in a workweek; and employees in motion picture theaters shall receive compensation of not less than 1½ times the regular rate after 45 hours in a workweek; and until May 1, 1977, custodial employees in the hotel and motel industry shall receive compensation of not less than 1½ times the regular rate after 44 hours in a workweek; and until May 1, 1977, employees in food service employment shall receive not less than 1½ times the regular rate after 45 hours in a workweek.

(2) The provisions of subsection (1) of this Section are not applicable to:

A. Any salesman or mechanic primarily engaged in selling or servicing automobiles, trucks or farm implements, if he is employed by a nonmanufacturing establishment primarily engaged in the business of selling such vehicles or implements to ultimate purchasers; or

B. Any salesman primarily engaged in selling trailers, boats, or aircraft, if he is employed by a nonmanufacturing establishment primarily engaged in the business of selling trailers, boats, or aircraft to ultimate purchasers.

C. Any employer of agricultural labor, with respect to such agricultural employment.

D. Any governmental body.

(Ch. 48, par. 1006)

§ 6. (a) For any occupation, the Director may provide by regulation for the employment in that occupation of learners at such wages lower than the minimum wage provided in Section 4, subsection (a) as the Director may find appropriate to prevent curtailment of oppor-

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tunities for employment and to safeguard the minimum wage rate of this Act.

(b) Where the Director has provided by regulation for the employment of learners, such regulations are subject to provisions hereinafter set forth and to such additional terms and conditions as may be established in supplemental regulations applicable to the employment of learners in particular industries.

(c) In any occupation, every employer may pay a subminimum wage to learners during their period of learning. However, under no circumstances, except those provided in Section 4, subsection (a), may an employer pay a learner a wage less than *$1.50* ~~$.90~~ per hour.

(d) No person is deemed a learner in any occupation for which he has completed the required training; and in no case may a person be deemed a learner in that occupation after 6 months of such training, except where the Director finds, after investigation, that for the particular occupation a minimum of proficiency cannot be acquired in 6 months.

Section 2. This amendatory Act of 1976 takes effect upon becoming a law.

Passed in the General Assembly June 30, 1976.

Approved August 22, 1976.

PUBLIC ACT 79-1437.

PUBLIC HEALTH.

ILLINOIS HEALTH FACILITIES PLANNING ACT — BROADENS DEFINITION OF "AREAWIDE HEALTH PLANNING ORGANIZATION" TO INCLUDE "COMPREHENSIVE HEALTH PLANNING ORGANIZATION" — EFFECTIVE DATE.

(House Bill No. 3659. Approved August 23, 1976.)

AN ACT to amend Section 3 of the "Illinois Health Facilities Planning Act", approved August 27, 1974, as amended.

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

Section 1. Section 3 of the "Illinois Health Facilities Planning Act", approved August 27, 1974, as amended, is amended to read as follows:

(Ch. 111½, par. 1153)

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All right, the Senate will just stand in recess then until 2:55.

(RECESS)

(AFTER RECESS)

PRESIDING OFFICER: (SENATOR ROCK)

All right, the Senate will come to order. It's 2:55. We are on the order of House Bill 1930 on 2nd reading. Under consideration is Amendment No. 1 offered by Senator McCarthy. Senator McCarthy.

SENATOR MCCARTHY:

Yes, Mr. President, there are several Senators who have been active in the drafting of this amendment. I'm sure... certain that they can explain or answer any questions. Senator Bruce has been active, Senator Harris, Senator Savickas. What this is, is an amendment to cover a problem that's been pointed up in the Minimum Wage Law, and what the amendment does, if adopted and I hope it is adopted, is that it provides that the compulsory overtime shall not be applicable to any employee who is employed in a bonafide executive or professional capacity or whose regular weekly rate of pay is not less than a hundred and seventy percent of the State-wide average weekly wage. What that means is, the compulsory, as I understand it, based on the input from these men and the people who are interested in the...representing the interest groups that have been active in this, is that compulsory...yeah, is that compulsory overtime shall not apply on minimum wage if you have a bonafide executive involved or a person in a professional capacity, and when you get into the hundred and seventy percent, I think that comes out to a worker who is about eighteen thousand dollars a year. I hope I've explained it. As I've indicated, Senator Bruce, Senator Harris, Senator Savickas and others have been interested in developing this amendment. If there are any questions, we'd attempt to answer them, otherwise, I move for the adoption of

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the amendment.

PRESIDING OFFICER: (SENATOR ROCK)

All right, any discussion? Senator Harris.

SENATOR HARRIS:

Thank you, Mr. President. I want to say that the language of the amendment as being offered by Senator McCarthy is not all that I would like it to be. It...I very frankly would like to have the word "administrative" follow the word "executive" as originally we discussed. Oh, I shouldn't say originally but at one point in the discussion we discussed. I am one of those who's been around long enough to know that - while you may not have all that you want, this is acceptable to me, and I think will be supported by the overwhelming majority of this side of the aisle because as the President has pointed out, Illinois is facing a crisis on this oversight that occurred when we attempted to amend Illinois' exceptions with respect to compulsory overtime pay when we amended the Minimum Wage Act last June. And while this is not all that I would want it to be, I will urge those members of this side of aisle to support the adoption of this amendment. Thank you, Mr. President.

(end of reel)

PRESIDING OFFICER: (SENATOR ROCK)

Further discussion? Senator Partee.

SENATOR PARTEE:

I would join in asking that everybody who is interested in Illinois join in voting for this bill. There's a significant problem facing the businesses, the schools, the colleges, the junior colleges, the community colleges and every other kind of institution that hires people, would...they would all be placed in a position of absolute financial jeopardy if this oversight is not corrected. Unfortunately, there was something lost here in communication and several people would certainly be able and adequate sponsors of this amendment. I would like to particularly say that Senator Terry Bruce has worked very hard and very diligently through seventeen revisions of the language involved in this amendment. And I'd like spread of record my personal appreciation for all that he has done toward finding a solution to this vexing problem. I'd like to say that Senator Savickas as the Chairman of the committee, has been cooperative in terms of not making for problems in getting the bill to the Floor and has given of himself and his time and attention toward the solution of this problem. Senator McCarthy likewise has been very instrumental in trying to find a solution to this problem and in tandem, the three of them have done a major portion of the work and I think it should be spread of record and I hereby do so, say that they have done a significant job for the people of this State. I would just hope that we would not permit anything as mundane as our personal feelings to do violence to the people of this State whose rights and whose dollars do, in fact, preponderate our individual feelings. I would ask everybody to be supportive of this for the people of this State.

PRESIDING OFFICER: (SENATOR ROCK)

Further discussion? Senator Buzbee.

SENATOR BUZBEE:

Thank you, Mr. President. I wonder if Senator Harris would take note of...of the comments and the questions I'm going to ask now because Senator Harris, I was just right before you started speaking, I had just finished a conversation out in the rotunda with representatives from the Illinois State Chamber of Commerce, the Illinois Manufacturers Association and the Illinois Retail Merchants Association, and the stance that I understand that they are taking is without the word administrative they had just as soon not have this bill at all. And so, I have made a commitment to people in business in my district that I was going to support legislation that would correct this problem. However, it's my understanding that those three organizations believe that this legislation does not sufficiently correct that problem and so, they would be happy with a No vote. So, now I come in and hear the leader of the Republican side of the aisle say he would like to have the word administrative in there but...but he's willing to accept this. So, I'm a little confused at this point as to...as to how I'm going to vote. That's not the first time, but...but I really don't...I really don't think that they're getting what they think they need. And...and I guess, Senator Harris, what I'm saying to you is I...I'm questioning why you're for it.

PRESIDING OFFICER: (SENATOR ROCK)

Senator Harris.

SENATOR HARRIS:

Well, I tried to explain, Senator Buzbee, that I'm one of those who's been around here long enough that when you learn that you can't get a meal, and you can get a sandwich, take a sandwich. Illinois is in crisis and I'm not happy about this, but I'm not going to go home from here today having done nothing and for, frankly, the last several days, there have been many who have really been trying to resolve this and I...I know that there is almost unanimity about the...the conclusion that something should be done.

Now, there are nuances with respect to the...the Calendar, the... the actual Calendar and the uniqueness of the Illinois Constitution and there are stresses and currents and cross currents abroad in this Chamber and somewhat similar kinds of influences that live within the House of Representatives. There are those, I would presume, that would hope that after 12:00 o'clock noon on January 12th, an amendment to this Act that would more completely satisfy the business community can be enacted with a simple majority. That will take time. I will declare that I don't see how anything can reach Executive approval before March, honestly. It just...just doesn't work out that way and for Illinois to go on from the 16th of December to sometime in March without us acting even though it is without some important provisions, I cannot accept. And I'm not the State Chamber or the Illinois Manufacturers Association or the I...Illinois Retail Merchants Association, or any of those fine, conscientious groups, nor am I the AFL-CIO. I'm Senator Harris, elected by the 38th Legislative District to make a judgement, to attempt to cure problems that face Illinois. And I think the responsible course of action on the 16th of December and if we act with dispatch today, we can have a better circumstance than is the law of Illinois today if we adopt this amendment and send it to the House and get concurrence and send it to Governor Walker. I hope that adequately explains my position on this.

PRESIDING OFFICER: (SENATOR ROCK)

All right. There are a number who have indicated they wish to talk. Senator Buzbee.

SENATOR BUZBEE:

Well, thank you. I didn't mean to make you mad, Senator Harris. I...nor did I...nor did I mean to imply that you were the State Chamber or anything else, but I know that you have been working closely with various organizations as well as Senator Bruce and Senator Savickas and Senator McCarthy in trying to straighten out the problem. And I have now received my answer

from your response and thank you.

PRESIDING OFFICER: (SENATOR ROCK)

Senator Harber Hall.

SENATOR HALL:

Mr. President, I feel as though I could ask several questions of several people. Although I do serve on the Labor and Commerce Committee, I haven't been exposed to this amendment until just the last couple of minutes and so, naturally, I don't think it's unreasonable that I should ask some questions here and knowing...or having heard who the proposers of the amendment are, I guess I can address them a few questions. Senator McCarthy, I wonder if you would yield for a question or two.

PRESIDING OFFICER: (SENATOR ROCK)

Indicates he will yield. Senator Hall.

SENATOR HALL:

Thank you for your cooperation, Senator. I wonder who determined and how was it determined that a hundred and seventy percent of the average weekly wage was written into this amendment?

PRESIDING OFFICER: (SENATOR ROCK)

Senator McCarthy.

SENATOR McCARTHY:

I'd like to lob that shot back to Senator Bruce.

PRESIDING OFFICER: (SENATOR ROCK)

Senator McCarthy will yield to Senator Bruce. Senator Bruce.

SENATOR BRUCE:

Senator Hall, these amendments are not always constructed rationally. And early on in the discussions of how to handle two... two facets of the amendment, the first sentence which relates to executive, administrative or professional people and then there was a strong suggestion made by...many members of the House that we add a...a dollar amount. The dollar amount that was on for nearly

two days, we would pay one hundred and fifty dollars more than the State-wide average wage which is now two hundred and five dollars, which would make it a three hundred a fifty-five dollar amount. Several people including the State Department of Labor suggested that we would be getting back into the same problem that we have had with the State minimum wage when we had a set figure and they suggested that we put in a percentage amount of the State-wide weekly wage so that we were always increasing not only the weekly wage, but the amount that you would be required to earn as an executive before you were exempt. So, that it would move up with inflation, in other words. So, the illogic of the situation is that you convert one hundred and fifty dollars into a percentage of two hundred and five which works out to a hundred and...one hundred and sixty-nine point something percent and round it to a hundred and seventy. That's...that's how we got there. That may not be very logical but that's the way the amendment was constructed.

PRESIDING OFFICER: (SENATOR ROCK)

Senator Harber Hall.

SENATOR HALL:

Thank you, Senator Bruce and Senator McCarthy for your more accurate lob than I've seen you perform before. I would like to ask Senator Bruce again, then, who we are. I've been talking to the Minority Spokesman for the Labor and Commerce Committee and I don't think he's too familiar with this and I just wonder, is this...does this represent the collective thinking of the Democrat side or...or...their minority thought going into this? I don't know who we are, Senator Bruce, when you say we, that would make some difference in itself, but, I would like to know another thing, besides who we are is what a bonafide executive or professional capacity, how that can be properly defined, or if it is written and properly defined in the Fair Labor Standards Act or somewhere else.

PRESIDING OFFICER: (SENATOR ROCK)

Senator Bruce.

SENATOR BRUCE:

Well, as to the we, it obviously included Senator Savickas and Senator McCarthy, very early. Then it included Senator... Representative Hart who is the House sponsor and Senator Harris almost from the inception also. And then, various ...members of organized labor and the business community. And they have seen...my count on this amendment is that this is the seventeenth draft that we have proposed or someone within that group named has proposed that we consider and we are assured by members on this side, that this is acceptable to them and Senator Harris and others have conveyed the fact that it would be acceptable to them, and we had hoped to get the bill to the House. Now, as to the language of bonafide, that is language that comes out of the Federal Fair Labor Standards Act which has been in since 1938. And one of my positons along with Senator Savickas that we keep language that had been in administrative rulings and in the courts for that long a time so that the State Department of Labor here did not have to spend all the money reconstructing what, in fact, is a professional and so we've got all of that Federal legislation to fall back on, so that...we just picked it right up out of the Federal law and put it here.

PRESIDING OFFICER: (SENATOR ROCK)

Senator Harber Hall.

SENATOR HALL:

Well, I...I think I'm just supp sed to speak against the amendment. I like these last minute efforts to get something done for somebody and in this case, we, as referred to, appears to be organized labor in the State of Illinois who want control of our Department of Labor through language in our State Statute that would be other than what it had formerly been with relation to the Fair Labor Standards Act and I recongize that Senator Harris is quite right, we are in a crisis. My constituents have certainly let me know

PUBLIC ACT 79-1523.

EMPLOYMENT.

MINIMUM WAGE LAW — AMENDS ACT OF 1971 — EFFECTIVE DATE.

(House Bill No. 1930. Approved January 10, 1977.)

AN ACT to amend Sections 3 and 4a of the "Minimum Wage Law", approved September 6, 1971, as amended.

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

Section 1. Sections 3 and 4a of the "Minimum Wage Law", approved September 6, 1971, as amended, are amended to read as follows:

(Ch. 48, par. 1003)

§ 3. As used in this Act:

(a) "Director" means the Director of the Department of Labor, and "Department" means the Department of Labor.

(b) "Wages" means compensation due to an employee by reason of his employment, including allowances determined by the Director in accordance with the provisions of this Act, for gratuities and, when furnished by the employer, for meals and lodging actually used by the employee.

(c) "Employer" includes any individual, partnership, association, corporation, business trust, governmental or quasi-governmental body, or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee, for which one or more persons are gainfully employed on some day within a calendar year. An employer is subject to this Act in a calendar year on and after the first day in such calendar year in which he employs one or more persons, and for the following calendar year.

(d) "Employee" includes any individual permitted to work by an employer in an occupation, but does not include any individual permitted to work:

(1) For an employer employing fewer than 4 employees exclusive of the employer's parent, spouse or child or other members of his immediate family;

(2) As an employee employed in agriculture (A) if such employee is employed by an employer who did not, during any calendar quarter during the preceding calendar year, use more than 500 man-days of agricultural labor, (B) if such employee is the parent, spouse or child, or other member of the employer's immediate family, (C) if such employee (i) is employed as a hand harvest laborer and is paid on a

piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment, (ii) commutes daily from his permanent residence to the farm on which he is so employed, and (iii) has been employed in agriculture less than 13 weeks during the preceding calendar year, (D) if such employee (other than employee described in clause (C) of this subparagraph (i) is 16 years of age or under and is employed as a hand harvest laborer, is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment, (ii) is employed on the same farm as his parent or person standing in the place of his parent, and (iii) is paid at the same piece rate as employees over 16 are paid on the same farm.

(3) In domestic service in or about a private home;

(4) As an outside salesman; *or*

(5) As a member of a religious corporation or organization~~, or~~.

The above exclusions from the term "employee" may be further defined by regulations of the Director.

(e) "Occupation" means an industry, trade, business or class of work in which employees are gainfully employed.

(f) "Gratuities" means voluntary monetary contributions by an employee from a guest, patron or customer in connection with services rendered;

(g) "Outside salesman" means an employee *regularly engaged in making sales or obtaining orders or contracts for services where a major portion of such duties are performed away from his employer's place of business.*~~, the major portion of whose work is performed away from a central place of business and the major portion of whose compensation consists of commissions on sales.~~

(Ch. 48, par. 1004a)

§ 4a. (1) Except as otherwise provided in this Section, no employer shall employ any of his employees for a workweek of more than 40 hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed. However, employees in restaurants shall receive compensation of not less than 1½ times the regular rate after 46 hours in a workweek; and employees in motion picture theaters shall receive compensation of not less than 1½ times the regular rate after 45 hours in a workweek; and until May 1, 1977, custodial employees in the hotel and motel industry shall receive compensation of not less than 1½ times the regular rate after 44 hours in a workweek; and until May 1, 1977, employees in food service employment shall receive not less than 1½ times the regular rate after 45 hours in a workweek.

(2) The provisions of subsection (1) of this Section are not applicable to:

Changes or additions indicated by *italics* deletions by ~~strikeout.~~

A. Any salesman or mechanic primarily engaged in selling or servicing automobiles, trucks or farm implements, if he is employed by a nonmanufacturing establishment primarily engaged in the business of selling such vehicles or implements to ultimate purchasers; or

B. Any salesman primarily engaged in selling trailers, boats, or aircraft, if he is employed by a nonmanufacturing establishment primarily engaged in the business of selling trailers, boats, or aircraft to ultimate purchasers.

C. Any employer of agricultural labor, with respect to such agricultural employment.

D. Any governmental body.

E. Any employee employed in a bona fide executive, administrative or professional capacity, as defined by the Federal Fair Labor Standards Act of 1938, as now or hereafter amended. For bona fide executive, administrative, and professional employees of not-for-profit corporations, the Director may, by regulation, adopt a weekly wage rate standard lower than that provided for executive, administrative, and professional employees covered under the Fair Labor Standards Act of 1938, as now or hereafter amended.

Section 2. This amendatory Act takes effect upon its becoming a law.

Passed in the General Assembly January 7, 1977.

Approved January 10, 1977.

PUBLIC ACT 79-1524.

APPROPRIATIONS.

COURT OF CLAIMS — AWARDS MADE BY COURT — EFFECTIVE DATE.

(House Bill No. 4016. Approved January 10, 1977.)

AN ACT making appropriations for certain purposes.

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

Section 1. The following named amounts are appropriated from the Road Fund to pay the claims in conformity with awards and recommendations made by the Court of Claims in the amounts as hereinafter indicated:

No. 5655, RICKY BLACKWELL — Tort, personal

Changes or additions indicated by *italics* deletions by ~~strikeout.~~

to by the President and Secretary of the Board of Trustees of the System;

(11) The Board of Regents, and the universities under its jurisdiction to be certified to by the chairman and secretary of the Board of Regents, with the corporate seal of the Board of Regents attached thereto;

(12) The Board of Governors of State Colleges and Universities, and the universities and colleges under its jurisdiction to be certified to by the chairman and secretary of the Board of Governors of State Colleges and Universities, with the corporate seal of the Board of Governors of State Colleges and Universities attached thereto;

(13) Southern Illinois University, to be certified to by the President and Secretary of the Board of Trustees of Southern Illinois University, with the corporate seal of the University attached thereto;

(14) The Adjutant General, to be certified to by the Adjutant General and approved by the Department of Finance;

(15) The Illinois Legislative Investigating Commission, to be certified and approved by its Chairman, or when it is orgainized with Co-Chairmen, by either of its Co-Chairmen;

(16) ~~(15)~~ All other officers, boards, commissions and agencies of the State govenment, certified to by such officer or by the president or chairman and secretary or by the executive officer of such board, commission or agency and approved by the Department of Finance;

(17) ~~(16)~~ Individuals, to be certified by such individuals, and approved by the Department of Finance;

(18) ~~(17)~~ The farmers' institute, agricultural, livestock, poultry, scientific, benevolent, and other private associations, or corporations of whatsoever nature, to be certified to by the president and secretary of such society and approved by the Department of Finance.

Nothing contained in this Section shall be construed to amend or modify the "Personnel Code".

This Section is subject to Section 9.02.

Section 2. This amendatory Act takes effect upon its becoming a law.

Passed in the General Assembly June 22, 1977.

Approved September 16, 1977.

PUBLIC ACT 80-735.

EMPLOYMENT.

MINIMUM WAGE LAW — EXEMPTIONS — EFFECTIVE DATE.

(House Bill No. 758. Approved September 16, 1977.)

Changes or additions indicated by *italics* deletions by ~~strikeout.~~

AN ACT to amend Section 4a of the "Minimum Wage Law", approved September 6, 1971, as amended.

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

Section 1. Section 4a of the "Minimum Wage Law", approved September 6, 1971, as amended, is amended to read as follows:

(Ch. 48, par. 1004a)

§ 4a. (1) Except as otherwise provided in this Section, no employer shall employ any of his employees for a workweek of more than 40 hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed. However, employees in restaurants shall receive compensation of not less than 1½ times the regular rate after 46 hours in a workweek; and employees in motion picture theaters shall receive compensation of not less than 1½ times the regular rate after 45 hours in a workweek; and until May 1, 1977, custodial employees in the hotel and motel industry shall receive compensation of not less than 1½ times the regular rate after 44 hours in a workweek; and until May 1, 1977, employees in food service employment shall receive not less than 1½ times the regular rate after 45 hours in a workweek.

(2) The provisions of subsection (1) of this Section are not applicable to:

A. Any salesman or mechanic primarily engaged in selling or servicing automobiles, trucks or farm implements, if he is employed by a nonmanufacturing establishment primarily engaged in the business of selling such vehicles or implements to ultimate purchasers; ~~or~~

B. Any salesman primarily engaged in selling trailers, boats, or aircraft, if he is employed by a nonmanufacturing establishment primarily engaged in the business of selling trailers, boats, or aircraft to ultimate purchasers.

C. Any employer of agricultural labor, with respect to such agricultural employment.

D. Any governmental body.

E. Any employee employed in a bona fide executive, administrative or professional capacity, as defined by the Federal Fair Labor Standards Act of 1938, as now or hereafter amended. For bona fide executive, administrative, and professional employees of not-for-profit corporations, the Director may, by regulation, adopt a weekly wage rate standard lower than that provided for executive, administrative, and professional employees covered under the Fair Labor Standards Act of 1938, as now or hereafter amended.

F. Any commissioned employee as described in paragraph (i) of

Section 7 of the Federal Fair Labor Standards Act of 1938 and rules and regulations promulgated thereunder, as now or hereafter amended.

G. Any employment of an employee in the stead of another employee of the same employer pursuant to a worktime exchange agreement between employees.

(3) The provisions of subparagraph E, F, and G of subsection (2) have been effective and were always intended by the General Assembly to be effective as of August 22, 1976. If prior to the effective date of this subsection (3) any employer shall have paid any claim under this section made by an executive, administrative, or professional employee, then that employer may not recover any amount so paid or discharge or discipline any executive, administrative, or professional employee for failure or refusal to return any amount so paid.

Section 2. This amendatory Act takes effect upon its becoming a law.

Passed in the General Assembly June 24, 1977.

Approved September 16, 1977.

PUBLIC ACT 80-736.

PUBLIC HEALTH.

STATE COUNCIL ON NUTRITION — CREATED — EFFECTIVE DATE.

(House Bill No. 773. Approved September 16, 1977.)

AN ACT to create a State Council on Nutrition and to specify its powers and duties.

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

Section 1. There is created a State Council on Nutrition, herein called the Council, which shall consist of the Chairmen and Minority Spokesmen of the Senate Committee on Public Health, Welfare and Corrections and of the Committee on Human Resources of the House of Representatives; 2 members each appointed by the Speaker of the House, the House Minority Leader, the President of the Senate and the Senate Minority Leader, one member in each case to be a member of the respective House of the General Assembly, and one member to be a spokesman or representative of any of the following: voluntary

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TITLE 56: LABOR AND EMPLOYMENT
CHAPTER I: DEPARTMENT OF LABOR
SUBCHAPTER b: REGULATION OF WORKING CONDITIONS

PART 200
ILLINOIS MINIMUM WAGE LAW

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SUBPART B: ESTABLISHMENT OF MINIMUM WAGE ALLOWANCE FOR GRATUITIES

SUBPART C: SEX DISCRIMINATION

SUBPART D: OVERTIME

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200.830 Forbidden Activity Covered by Other Laws
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200.840 Effective Date

AUTHORITY: Implementing and authorized by the Minimum Wage Law (Ill. Rev. Stat. 1983, ch. 48, pars. 1001 et seq.).

SOURCE: Filed December 10, 1971; codified at 8 Ill. Reg. 18473.

SUBPART A: DEFINITIONS

Section 200.100 Definition of Act
As used herein, the term "Act" shall mean the Illinois Minimum Wage Law, P.A. 77-1451, as amended, (Ill. Rev. Stat. 1983, ch. 48, par. 1001 et seq.)

Section 200.105 Statutory Terms Defined
As used herein, the terms "Director", "Department", "Wages", "Employer", "Employee", "Gratuities", "Occupation", and "Outside Salesmen", shall have the meaning set forth in Section 3 of the Act and as further defined herein or hereafter.

Section 200.110 Wages
Wages means compensation due to an employee by reason of his employment including allowances determined by the Director in accordance with the provisions of this Act. These allowances will include gratuities, and when customarily furnished by a group of employers to their employees, meals, lodging, and other facilities. When the reasonable cost of these allowances are not recorded by the employer, the Director will determine the fair value of such meals, lodging or other facilities for defined classes of employees based on the average cost to the employer or groups of employers, or other appropriate

measures of fair value. Such evalutions when applicable, and pertinent, shall be used in lieu of the actual measure of cost in determining the wage paid to any employee.

Section 200.115 Hours Worked
Hours worked includes all the time an employee is required to be on duty, or on the employer's premises, or at other prescribed places of work, and any additional time he is required or permitted to work for the employer.

Section 200.120 Employee
Employee includes any individual permitted or suffered to work by an employer. In the case of an individual employed by a public agency, such term means any individual employed by the State of Illinois or any of its political subdivisions except for an individual who is a bona fide elective or appointed official.

Section 200.125 Tipped Employee
Tipped employee is an employee engaged in an occupation in which gratuities are customarily recognized as part of the remuneration of such employee as referred to in Section 4(c) of the Act; an employee cannot be deemed a tipped employee unless he or she received $20 or more per month in gratuities.

Section 200.130 Length of Coverage for an Employee
An employee who becomes an employee according to this Act remains an employee for the rest of the quarter in which the fourth person was hired or the entire pay period in which the fourth person was hired whichever is longer.

Section 200.135 Immediate Family
An employer who employs fewer than four employees exclusive of the employer's parent, spouse or child or other member of his immediate family is not subject to the provisions of this Act. A person is a member of the employer's immediate family if he or she is related to the employer either by blood or marriage and living as part of the same household.

Section 200.140 A Member of a Religious Corporation or Organization
A member of a religious corporation or organization is an individual whose functions are spirtual or religious, such as a priest, rabbi, minister, nun, reverend, or other such individuals who perform similar duties.

Section 200.145 Volunteer
The term volunteer means a person who works for an employer under no contract of hire, expressed or implied, and with no promise of compensation, other than reimbursement for expenses as part of the conditions for work. A volunteer is not an employee for the purposes of this Act.

Section 200.150 Uniforms
No allowances for supply, maintenance or laundering of required uniforms shall be permitted as part of the minimum wage.

Section 200.155 Agriculture
Agriculture includes farming in all of its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in Section 15(g) of the U.S. Agricultural Marketing Act, as amended (7 U.S.C. 1621 et seq.)), the raising of livestock, bees, furbearing animals, or poultry, and any practices (including forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market, but not the operation of processing such commodities and any activities subsequent to such operation.

Section 200.160 Man-Day
Man-day means any day during which an employee performs any agricultural labor for not less than one hour.

Section 200.165 Full-Time Students

Full-time students for the purposes of this Act are defined as students who receive instruction at the location of a bona fide educational institution, in accordance with the institution's accepted definition of a full-time student. A full-time student retains that stutus during the student's Christmas and other school breaks, but not during summer vacations.

Section 200.170 The use of Federal Definitions of Various Terms

For guidance in the interpretation of this Act and these Rules and Regulations, the Director may refer to the Regulations and Interpretations of the Administrator, Wage and Hour Division, U.S. Department of Labor, administering the Fair Labor Standards Act of 1938, as amended. (29 U.S.C. 201 et seq.)

Section 200.175 Representatives of Director

All reference to the "Director" herein shall include the duly authorized representatives of the Director designated by him to act on his behalf in his place and stead, in a specific capacity for a particular purpose.

SUBPART B: ESTABLISHMENT OF MINIMUM WAGE ALLOWANCE FOR GRATUITIES

Section 200.200 Meals and Lodging

a) The reasonable cost of meals and lodging furnished by the employer and actually used by the employee may be considered as part of the wage paid an employee only where customarily furnished to the employee. Not only must the employee receive the meals and/or lodgings for which he is charged, but it is essential that his acceptance thereof be voluntary, and uncoerced. It is not sufficient that the meals and/or lodgings be furnished by an employer to justify the charge. It is necessary that the meals and/or lodgings are furnished regularly by the employer to his employees in the same or similar trade, business or enterprise in the same or similar communities.

b) The employer may charge the employee the reasonable cost to the employer of furnishing meals and/or lodgings which cost does not include profit to the employer and/or any affiliated person.

SUBPART C: SEX DISCRIMINATION

Section 200.300 Sex Discrimination

The Act forbids wage discrimination between employees on the basis of sex. The Illinois Fair Employment Practices Commission has the responsibility of enforcement of the Illinois Fair Employment Practices Act, as amended (Ill. Rev. Stat. 1983, ch. 48, par. 851 et seq.) which also prohibits discrimination in employment based on sex. The Illinois Department of Labor will co-operate with the Fair Employment Practices Commission in enforcing the similar sex discrimination provisions in their respective Acts as they relate to wages.

SUBPART D: OVERTIME

Section 200.400 Definitions

a) Restaurant: The term "restaurant" as used in the Act means an establishment which is primarily engaged in selling and serving prepared food and beverages to purchasers for immediate consumption on the premises, and which provides the characteristic employee services and dining (table and seating) facilities and equipment.

b) Food Service Employment: A food service employment is employment which the employees are primarily engaged in connection with the preparation or offering of food or beverages

for immediate human consumption, but which does not have the physical or functional equipment that patrons require for consumption of meals on the premises.

c) Agricultural Labor: An employer of agricultural labor is a person who employs employees in activities which are described in Section 12 of these Rules and Regulations.

d) Governmental Body: A governmental body is the state and its agencies, municipalities and units of local government, and school districts.

Section 200.405 Determining Workweek for Overtime

a) An employee's workweek is a fixed and regularly recurring period of 168 hours - seven consecutive 24-hour periods. It need not coincide with the calendar week, but it may begin on any calendar day and at any hour of the day.

b) Once the beginning time of a workweek is established, it remains fixed regardless of the schedule of hours worked by the employee. The beginning of the workweek may be changed if the change is intended to be permanent and is not designed to evade the overtime requirements of this Act.

Section 200.410 Exclusions from the Regular Rate

The "regular rate" shall be deemed to include all remuneration for employment paid to, or on behalf of, the employee, but shall not include:

a) Sums paid as gifts such as those made at Christmas or other amounts that are not measured by or depenent on hours worked; and

b) Payments made for occasional periods when no work is performed due to a vacation, holiday, illness, failure of employer to provide sufficient work, or other similar cause; and

c) Sums paid in recognition of services performed which are:
   1) determined at the sole discretion of the employer, or
   2) made pursuant to a bona fide thrift or savings plan, or
   3) in recognition of a special talent; and

d) Contributions irrevocably made by an employer to a trustee or third person pursuant to a bona fide plan for providing old age, retirement, life, accident, or health insurance or similar benefits for employees; and

e) Extra compensation provided by a premium rate paid for certain hours worked by the employee in any day or workweek because such hours are hours worked in excess of eight a day where such premium rate is not less than one and one-half times the rate established in good faith for like work performed in non-overtime hours on other days; and

f) Extra compensation provided by a premium rate paid to employees on Saturdays, Sundays, holidays or regular days of rest where such premium rate is not less than one and one-half times the rate established in good faith for like work performed in non-overtime hours on other days; and

g) Extra compensation provided by a premium rate paid to the employee, in pursuance of an applicable employment contract or collective bargaining agreement, for work outside of the hours established in good faith by the contract or agreement as the basic workday where such premium rate is not less than one and one-half times the rates established in good faith by the contract or agreement for like work performed during such workday or workweek.

Section 200.415 Regular Rate of Pay for Determination of Overtime

a) Section 4(a) requires that overtime must be compensated at a rate not less than one and one-half times the regular rate at which the employee is actually employed. The regular rate of pay at which the employee is employed may in no event be less than the statutory minimum. If the employee's regular rate of pay is higher than the statutory minimum, his overtime compensation must be computed at a rate not less than one and one-half times such higher rate.

b) The regular rate is a rate per hour. The Act does not require employers to pay employees on an hourly rate basis. Their earnings may be determined on a piece-rate, salary, commission, or some other basis, but in such case the overtime pay due must be computed on the basis of the hourly rate derived from such earnings.

Section 200.420 Methods of Computing Overtime

a) Hourly Rate Employees: If an employee is employed solely on the basis of a single hourly rate, the hourly rate is the "regular rate". For overtime hours the employee must be paid, in addition to the straight time hourly earning, a sum determined by multiplying one half the hourly rate by the number of hours worked over the maximum set by statute.

b) Pieceworker: When an employee is employed on a piece rate basis (so much per piece, dozen, gross, etc.) the regular rate of pay is computed by adding together the total earnings for the workweek from piece rates and all other earnings (such as bonuses) and any sums paid for waiting time or other hours worked. This sum is then divided by the number of hours worked in that week to yield the piece worker's "regular rate" for that week. For the overtime work the piece-worker is entitled to be paid, in addition to the total straight time weekly earnings, one-half this regular rate for each hour over the maximum set by statute.

c) Day Rates and Job Rates: An employee may be paid a flat sum for a day's work or for doing a particular job, without regard to the number of hours worked in the day or at the job, and receive no other form of compensation. In such a case, the employee's regular rate is found by totalling all sums received at such day rates or job rates in the workweek and dividing by the total hours actually worked. The employee is then entitled to extra half-time pay at this rate for all hours worked over the maximum set by statute.

d) Employee Paid on a Salary Basis: If an employee is employed solely on a weekly salary basis, the regular hourly rate of pay is computed by dividing the salary by the number of hours which the salary is intended to compensate.

e) Salary for Periods other than a Workweek: Where the salary covers a period longer than a workweek such as a month, it must be reduced to its workweek equivalent. A monthly salary can be coverted to its equivalent weekly wage by multiplying by 12 (the number of months) and dividing by 52 (the number of weeks). A semi-monthly salary is converted to its equivalent weekly wage by multiplying by 24 and dividing by 52.

f) Fixed Salary for Fluctuating Hours: The regular rate of an employee whose hours of work fluctuate from week to week, who is paid a stipulated salary with the clear understanding that it constitutes straight time pay for all hours worked, whatever their number and whether few or many, will vary from week to week. The regular rate is obtained for each week by dividing the salary by the number of hours worked in the week. It cannot be less than the applicable minimum wage in any week. Since straight time compensation has already been paid, the employee must recieve additional overtime pay for each overtime hour worked in the week at not less than one-half this regular rate.

g) Employees Working at Two or More Rates: Where an employee in a single workweek works at two or more different types of work for which different straight time rates have been established, the regular rate for that week is the weighted average of such rates. That is, the earnings from all such rates are added together and this total is then divided by the total number of hours worked at all jobs. When the employer declares the kind of work and its corresponding regular rate of pay for overtime hours, this regular rate may be used to determine the time and one-half rate for that period.

h) Payments Other Than Cash: Where payments are made to employees in the form of goods or facilities which are regarded as part of wages, the reasonable cost to the employer of the fair value of such goods or facilities must be included in the regular rate.

i) Commission Payments: Commissions (whether based on a percentage of total sales or of sales in excess of a specified amount or on some other formula) are payments for hours worked and must be included in the regular rate. This is so regardless of whether the commission is the sole source of the employee's compensation or is paid in addition to a salary or hourly rate. It does not matter whether the commission earnings are computed daily, weekly, monthly or at some other interval.

j) Commission Paid on a Workweek Basis: When a commission is paid on a workweek basis, it is added to the employee's other earnings for that workweek, and the total is divided by the total number of hours worked in the workweek to obtain the employee's regular rate for the particular workweek. The employee must be paid extra compensation at one-half of that rate for each overtime hour worked.

k) Deferred Commission Payments: If the calculation and payment of the commission cannot be completed until some time after the regular pay day for the workweek, the employer may disregard it until the amount of commission can be determined. When the commission can be computed and paid, the additional overtime compensation will be paid.

l) To compute this additional overtime compensation, the commission is apportioned back over the workweeks of the period during which it was earned. The employee must then receive additional overtime pay for each week during the period in which overtime was worked. If it is not possible or practicable to allocate the commission on the basis of the amount of commission actually earned each week some other reasonable equitable method must be adopted. One such method is to allocate an equal amount of commission earnings to each workweek in the period in which the commission was earned. Another is to allocate equal amounts to each hour worked in that period.

m) Nothing in this Section limits the Department of Labor from authorizing the use of legal methods of computation for the purpose of computing overtime.

Section 200.425 Overtime - General

a) The Act does not require that an employee be paid over-time compensation for hours in excess of eight per day, or for work on Saturdays, Sundays, holidays or regular days of rest.

b) The Act does not require that holiday, vacation, sick pay or other similar causes be included in the regular rate of the employee. Hours that would not be hours worked if not paid for will not have the mathematical effect of increasing the regular rate.

c) Where payments are made to employees in the form of goods or facilities which are regarded as part of wages, the reasonable cost to the employer or the fair value of such goods must be included in the regular rate (for example, lodging would be one such facility).

SUBPART E: EMPLOYMENT OF THE HANDICAPPED

Section 200.500 Application to Employ Handicapped

a) Official application forms for a license to employ a handicapped person at less than minimum wage shall be provided by the Department to those employers applying for a license which application shall set forth among other things, the nature of the disability, a description of the occupation at which the worker is to be employed, and the wage the employer proposes to guarantee the worker per hour. The application shall be signed jointly by the employer and the worker. The Director may as a prerequisite require the submission of additional information including medical or psychological examination report or an equivalent statement from a qualified Federal or State agency.

b) The license shall be effective for a period to be designated by the Director. The worker may be paid the special minimum wage permitted under the license only during the effective period of the license. The wage rate set in the license shall be fixed at a figure designed to reflect adequately the individual worker's earning or productive capacity.

c) An employer of a handicapped worker upon expiration of a license may submit application for renewal subject however to the same or similar terms and conditions as required for an original application. If an application for renewal has been properly and timely filed prior to the expiration date of a license, the license shall remain in effect until the application for renewal has been granted or denied.

Section 200.505 Criteria Used to Establish Impairment of Age, and Physical and Mental Deficiency as Handicap Factors

a) Criteria which will be given consideration for the purpose of issuing a license to pay a sub-minimum wage to a person impaired by age or physical or mental deficiency are:

1) unusual working conditions;

2) physical fitness as the same relates to the minimum standards for employment in the specific work to be performed provided the standards are uniformly and equally applied to all applicants for the particular job category;

3) evaluation of factors such as quantity or quality of production, educational level, mental alertness and similar factors would be acceptable in individual cases where it is clearly shown that the same have a valid relationship to the job requirements and where the criteria are applied uniformly to all employees.

b) A claim or representation by an employer that the average cost of employing older workers as a group is higher than the average cost of employing younger workers as a group is not an acceptable differentiation to justify a sub-minimum wage to older workers. An older worker's production level must be measured on an individual basis against the production level required of other employees to justify a sub-minimum wage to older workers. The Department of Labor will use the Federal "Age Discrimination in Employment Act of 1967" (29 U.S.C.A. 623) as a guide in this area.

SUBPART F: EMPLOYMENT OF LEARNERS

Section 200.600 Employment of Learners

a) The term "learner" means a person who is participating in a training program for an occupation in which he is employed. A training program is one which must involve either formal instruction or on-the-job training during a period when the learner is entrusted with limited responsibility and is under supervision or guidance.

b) No employer subject to the provisions of the Act may employ a learner at less than the minimum wage provided in the Act without first obtaining a license from the Director. An employer may at no time pay a learner less than the minimum rate provided by Section 6 of the Act.

c) No person shall be deemed a learner at an establishment in an occupation for which he has completed the required training. A learner, having completed his required training must thereupon be paid at wages not less than the minimum wage required by Section 4(a) of the Act.

d) The period of learning may not exceed six months, except where the Director determines, following investigation, that the occupation for which the learner is to be trained required in excess of six months of such training to attain a level of minimum proficiency. A special request must be made by any employer seeking to extend the training period, said request shall be upon forms provided by the Department.

Section 200.605 Application to Employ a Learner

A license to employ a learner shall be applied for by the employer on the official form furnished by the Department for said purpose. The application must contain all the information required by such form, including among other things a statement clearly outlining the training program and the process in which the learner will be engaged while in training. The information shall further outline the total number of workers employed in the establishment, the number and hourly wage rate of experienced workers employed in the occupation in which the learner is to be trained, the hourly wage rate or progressive rate schedule which the employer proposes to pay to the learner, data regarding the age of the learner, the period of employment training at sub-minimum wages, the number of hours of employment training a week and the number of learners sought to be employed.

Section 200.610 Employing More Than One Learner

A license may be issued for the purpose of employing more than one learner in the same capacity. A special form, to be provided by the Director, is to be completed and forwarded to the Director as to each learner hired pursuant to a license which permits employment of more than one learner in the same capacity.

Section 200.615 Basic Learner Training Requirements

The occupation for which the learner is receiving training must require a sufficient degree of skill to necessitate a learning period. The training must not be for the purpose of acquiring manual dexterity and high production speed in repetitive operations, nor may the employment of a learner displace any other worker employed in the establishment or tend to impair or depress the wage rates or working standards established for experienced workers for like work of comparable character.

Section 200.620 Student Learners in Work Study Programs

a) "Student learner" is a student who receives course credit for participating in school-approved work study programs. Such a student learner may be paid at a sub-minimum wage rate in accordance with Section 1006 of the Act for the length of the course or for the time in which he/she receives course credit, whichever is shorter.

b) The employer or school must apply for a license to employ a student learner at a sub-minimum wage rate on official forms furnished by the Department for said purpose. A license may be issued for the purpose of employing more than one student learner in the same capacity.

SUBPART G: INSPECTION PROCEDURE

Section 200.700 Investigations

a) Investigations under the Act will be generated by employee complaints and regular inspections (including target and re-inspections).

b) Employees who wish to file a complaint must fill out a Back Wage Claim Application which will include the name, address, telephone number, and, if 18 years of age or younger, the birthdate of the complaining party; the name, address and telephone number of the employer; the type and amount of back wages claimed; the hours worked, wages per hour, and gratuities received; and the signature of the complaining party.

c) Any complaint which fails to meet all the requirements set forth in paragraph (b) of this section may be accepted by the Director if it otherwise contains the information determined by the Director to be necessary for a proper investigation and review of the alleged violation therein contained.

Section 200.705 Investigation Procedures

a) The inspector will determine whether or not the employer and employees are covered under the Illinois Minimum Wage Law.

b) The inspector will interview both the employer and the employees in order to gather information on such subjects as hours worked, rate of pay, meals, lodging, gratuities, age and other such conditions and practices of employment.

c) The inspector will review the time and payroll records for each employee and do a complete dollar audit for a period not to exceed three years for those employees to whom back wages are owed.

d) The employer will be notified of the results of the investigation, including the amount of back wages due, if any, by the inspector at the time of his inspection.

e) Both the employer and employees will be provided an opportunity to present further evidence at an informal, investigatory hearing with the Labor Law Enforcement Division.

Section 200.710 Enforcement Procedures

a) The Department of Labor will seek voluntary compliance by the employer. The payment of back wages due the employees will be evidence of substantial compliance with the provisions of the Act.

b) The Department will require proof that the employees received all the back wages due them, and it may require the employer to send certified checks, cashier's checks or money orders, made payable to the individual employees, to the Department for disbursement.

c) If the employer does not voluntarily comply within a reasonable amount of time, the Department will bring either a criminal or civil action against the employer as provided for in Sections 11 and 12 of the Act.

SUBPART H: RECORDS, POSTING AND NOTICE REQUIREMENTS

Section 200.800 Contents of Records

The following basic information must be contained in the records of the employers:

a) Name of each employee
b) Address of each employee
c) Birthdate of each employee eighteen years of age or under
d) Social Security Number
e) Sex and occupation in which employed
f) Hours worked each day and hours worked each workweek
g) Time of day and day of week when employee's workweek begins
h) Basis on which wages are paid
i) Additions and deductions from employee's wages for each pay period and an explanation of additions and deductions.
j) Type of payment (hourly rate, salary, commission, etc.), straight time and overtime pay and total wages paid each pay period
k) Dates of payment of each pay period covered by the payment.

Section 200.805 Identification of Learner or Handicapped

a) Employees who are employed at a learner or handicapped rate less than the prescribed minimum wage shall be identified on the payroll as learner or handicapped, together with their rate of pay and occupation.
b) Whenever possible, records of learners and handicapped workers are to be maintained in a separate file or folder for ready accessibility.

Section 200.810 Minimum Records of Gratuities

With respect to employees whose compensation is derived in part from 'gratuities', every such employer shall, in addition to the foregoing required information, also maintain and preserve records containing the following additional information and data with respect to each such employee:

a) An identifying symbol, letter or number on the payroll record indicating such employee is a person whose wage is determined in part by gratuities.
b) The report received from the employee setting forth gratuities received during each workday. Such reports submitted by the employee shall be signed and include his or her Social Security Number.
c) The amount by which the wage of each such employee has been deemed to be increased by gratuities as determined by the employer (not in excess of 50% of the applicable statutory minimum wage). The amount per hour which the employer takes as a gratuity credit shall be reported to the employee in writing each time it is changed from the amount per hour taken in the preceding week.
d) Hours worked each workday in any occupation in which the employee does not receive gratuities and the total daily or weekly straight time payment made by the employer for such hours.
e) Hours worked each workday in an occupation in which the employee received tips or gratuities, and total daily or weekly straight time earnings for such hours.

Section 200.815 Records Kept Outside of the Business Premises

Should any part of the records or documents be located in a place other than the business premises of the employer, they shall be made available to the representatives of the Department for examination. Should any part thereof be located outside of the geographic boundaries of the State of Illinois, the employer must pay all expenses of examination by the representatives of the Department, including travel, travel time, meal and lodging for each employee of the Department conducting said examination or investigation.

Section 200.820 Notice to Employers - Copies of the Act and Rules and Regulations

a) It is the responsibility of each employer to become informed concerning the application of the Act to his business, establishment or enterprise. Such information is available in the Chicago office of the Department.
b) The Director shall, on request, provide every employer subject to any provisions of the Illinois Minimum Wage Law, a copy of the Summary of the Act and the Rules and Regulations promulgated pursuant to the Act. Said employer shall have on file, accessible for ready reference by himself or his covered employees, a current copy of the Summary of the Act

and the Rules and Regulations pertaining thereto, together with all special interpretations issued by the Director as applied in the Act and the Rules and Regulations.

Section 200.825 Application of the Act

All functions and powers of the Department and the Director under the Illinois Minimum Wage Law shall be exercised in cooperation with the functions and powers of the U.S. Department of Labor under the Fair Labor Standards Act. In areas where the state and federal governments have concurrent powers under their respective Acts, the stricter of the two laws shall prevail.

Section 200.830 Forbidden Activity Covered by Other Laws

Nothing in the Act or these Rules and Regulations promulgated pursuant thereto is designed or intended to enable a person or employer to perform any act or activity forbidden by the laws of this State or of the United States.

Section 200.835 Communication with Department of Labor

All employers subject to the provisions of the Act and all persons aggrieved by reason of an alleged violation of the Act shall address all communications, complaints, applications and correspondence to the Department of Labor, State of Illinois, 910 S. Michigan Avenue, Room 1855, Chicago, Illinois 60605.

Section 200.840 Effective Date

These Rules and Regulations shall become effective 10 days following the filing of a certified copy thereof by the Director with the Secretary of State of Illinois.

(2) The document shall be legibly printed in black ink, by hand, type, or computer. Signatures and dates may be in contrasting colors if they will reproduce clearly.

(3) The document shall be on white paper of not less than 20-pound weight and shall have a clean margin of at least one-half inch on the top, the bottom, and each side. Margins may be used only for non-essential notations that will not affect the validity of the document, including but not limited to form numbers, page numbers, and customer notations.

(4) The first page of the document shall contain a blank space, measuring at least 3 inches by 5 inches, from the upper right corner.

(5) The document shall not have any attachment stapled or otherwise affixed to any page.

A document that does not conform to these standards shall not be recorded except upon payment of the additional fee required under this paragraph. This paragraph, as amended by this amendatory Act of 1995, applies only to documents dated after the effective date of this amendatory Act of 1995.

The fee requirements of this Section apply to units of local government and school districts.

Regardless of any other provision in this Section, the maximum fee that may be collected from the Department of Revenue for filing or indexing a lien, certificate of lien release or subordination, or any other type of notice or other documentation affecting or concerning a lien is $5. Regardless of any other provision in this Section, the maximum fee that may be collected from the Department of Revenue for indexing each additional name in excess of one for any lien, certificate of lien release or subordination, or any other type of notice or other documentation affecting or concerning a lien is $1.

(Source: P.A. 92-492, eff. 1-1-02.)

Section 99. Effective date. This Act takes effect on June 1, 2004.

Passed in the General Assembly January 14, 2004.

Approved March 19. 2004.

Effective June 1, 2004 .

PUBLIC ACT 93-0672
(Senate Bill No. 1645)

AN ACT concerning employment.

New matter indicated by italics - deletions by strikeout.

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 4a as follows:

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

Sec. 4a. (1) Except as otherwise provided in this Section, no employer shall employ any of his employees for a workweek of more than 40 hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than 1 1/2 times the regular rate at which he is employed.

(2) The provisions of subsection (1) of this Section are not applicable to:

A. Any salesman or mechanic primarily engaged in selling or servicing automobiles, trucks or farm implements, if he is employed by a nonmanufacturing establishment primarily engaged in the business of selling such vehicles or implements to ultimate purchasers.

B. Any salesman primarily engaged in selling trailers, boats, or aircraft, if he is employed by a nonmanufacturing establishment primarily engaged in the business of selling trailers, boats, or aircraft to ultimate purchasers.

C. Any employer of agricultural labor, with respect to such agricultural employment.

D. *Any employee of a governmental body excluded from the definition of "employee" under paragraph (e)(2)(C) of Section 3 of the Federal Fair Labor Standards Act of 1938.* ~~Any governmental body.~~

E. Any employee employed in a bona fide executive, administrative or professional capacity, including any radio or television announcer, news editor, or chief engineer, as defined by or covered by the Federal Fair Labor Standards Act of 1938 *and the rules adopted under that Act, as both exist on March 30, 2003, but compensated at the amount of salary specified in subsections (a) and (b) of Section 541.600 of Title 29 of the Code of Federal Regulations as proposed in the Federal Register on March 31, 2003 or a greater amount of salary as may be adopted by the United States Department of Labor* ~~, as now or hereafter amended~~. For bona fide executive, administrative, and professional employees of not-for-profit corporations, the Director may, by

New matter indicated by italics - deletions by strikeout.

regulation, adopt a weekly wage rate standard lower than that provided for executive, administrative, and professional employees covered under the Fair Labor Standards Act of 1938, as now or hereafter amended.

F. Any commissioned employee as described in paragraph (i) of Section 7 of the Federal Fair Labor Standards Act of 1938 and rules and regulations promulgated thereunder, as now or hereafter amended.

G. Any employment of an employee in the stead of another employee of the same employer pursuant to a worktime exchange agreement between employees.

H. Any employee of a not-for-profit educational or residential child care institution who (a) on a daily basis is directly involved in educating or caring for children who (1) are orphans, foster children, abused, neglected or abandoned children, or are otherwise homeless children and (2) reside in residential facilities of the institution and (b) is compensated at an annual rate of not less than $13,000 or, if the employee resides in such facilities and receives without cost board and lodging from such institution, not less than $10,000.

I. Any employee employed as a crew member of any uninspected towing vessel, as defined by Section 2101(40) of Title 46 of the United States Code, operating in any navigable waters in or along the boundaries of the State of Illinois.

(3) Any employer may employ any employee for a period or periods of not more than 10 hours in the aggregate in any workweek in excess of the maximum hours specified in subsection (1) of this Section without paying the compensation for overtime employment prescribed in subsection (1) if during that period or periods the employee is receiving remedial education that:

(a) is provided to employees who lack a high school diploma or educational attainment at the eighth grade level;

(b) is designed to provide reading and other basic skills at an eighth grade level or below; and

(c) does not include job specific training.

(4) A governmental body is not in violation of subsection (1) if the governmental body provides compensatory time pursuant to paragraph (o) of Section 7 of the Federal Fair Labor Standards Act of 1938, as now or hereafter amended, or is engaged in fire protection or law enforcement

New matter indicated by italics - deletions by strikeout.

activities and meets the requirements of paragraph (k) of Section 7 or paragraph (b)(20) of Section 13 of the Federal Fair Labor Standards Act of 1938, as now or hereafter amended.

(Source: P.A. 92-623, eff. 7-11-02.)

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

Passed in the General Assembly March 31, 2004.

Approved April 2, 2004.

Effective April 2, 2004.

PUBLIC ACT 93-0673
(Senate Bill No. 1271)

AN ACT making appropriations.

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

Section 5. "An Act making appropriations", Public Act 93-115, as vetoed, reduced, and restored, is amended by changing Section 20 of Article 1 as follows:

(P.A. 93-115, Article 1, Section 20)

Sec. 20. The following amounts, or so much of those amounts as may be necessary, respectively, for the objects and purposes named, are appropriated from State funds to the Illinois State Board of Education for the fiscal year beginning July 1, 2003:

From the Charter Schools Revolving Loan Fund:

For Charter Schools Loans..... $2,000,000

From the Teacher Certificate Fee Revolving Fund:

For all costs associated with the issuing of

teachers' certificates..... *$1,500,000*

~~teachers' certificates~~..... ~~$375,000~~

From the Private Business and Vocational Schools Fund:

For all costs associated with the Private Business and Vocational Schools Act..... $0

From the School Technology Revolving Fund:

For the Statewide Educational Network..... $125,000

From the State Board of Education Fund:

~~voters residing in the district to be reorganized. Title and possession of all real property and permanently located personal property of the district to be reorganized shall vest in the new district in which the property is located. Each new district shall succeed to its proportionate share of the bonded indebtedness of the reorganized district, to be determined according to the value, as equalized and assessed by the Department of Revenue, of all taxable property in each new district. Title and possession to all other property of the district as well as all other rights and obligations of the district shall be equitably distributed and apportioned between the 2 districts, as determined by the governing boards of both park districts. In the event that no agreement can be reached, the court in which the petition was filed to organize the new districts shall make the determination. All monies of the district on hand and all monies received from taxes levied before the creation of the 2 new districts shall be paid on a pro rata basis to each new district according to the value, as equalized and assessed by the Department of Revenue, of all taxable property in each new district. This subsection (b) shall be effective only until January 1, 1987.~~

(c) *(Blank).* ~~"Municipality" as used in this Section means a city, village or incorporated town.~~

(Source: P.A. 86-307.)

Passed in the General Assembly May 26, 2015.

Approved July 10, 2015.

Effective January 1, 2016.

PUBLIC ACT 99-0017
(Senate Bill No. 0038)

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 4a as follows:

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

Sec. 4a. (1) Except as otherwise provided in this Section, no employer shall employ any of his employees for a workweek of more than 40 hours unless such employee receives compensation for his employment

in excess of the hours above specified at a rate not less than 1 1/2 times the regular rate at which he is employed.

(2) The provisions of subsection (1) of this Section are not applicable to:

A. Any salesman or mechanic primarily engaged in selling or servicing automobiles, trucks or farm implements, if he is employed by a nonmanufacturing establishment primarily engaged in the business of selling such vehicles or implements to ultimate purchasers.

B. Any salesman primarily engaged in selling trailers, boats, or aircraft, if he is employed by a nonmanufacturing establishment primarily engaged in the business of selling trailers, boats, or aircraft to ultimate purchasers.

C. Any employer of agricultural labor, with respect to such agricultural employment.

D. Any employee of a governmental body excluded from the definition of "employee" under paragraph (e)(2)(C) of Section 3 of the Federal Fair Labor Standards Act of 1938.

E. Any employee employed in a bona fide executive, administrative or professional capacity, including any radio or television announcer, news editor, or chief engineer, as defined by or covered by the Federal Fair Labor Standards Act of 1938 and the rules adopted under that Act, as both exist on March 30, 2003, but compensated at the amount of salary specified in subsections (a) and (b) of Section 541.600 of Title 29 of the Code of Federal Regulations as proposed in the Federal Register on March 31, 2003 or a greater amount of salary as may be adopted by the United States Department of Labor. For bona fide executive, administrative, and professional employees of not-for-profit corporations, the Director may, by regulation, adopt a weekly wage rate standard lower than that provided for executive, administrative, and professional employees covered under the Fair Labor Standards Act of 1938, as now or hereafter amended.

F. Any commissioned employee as described in paragraph (i) of Section 7 of the Federal Fair Labor Standards Act of 1938 and rules and regulations promulgated thereunder, as now or hereafter amended.

G. Any employment of an employee in the stead of another employee of the same employer pursuant to a worktime exchange agreement between employees.

H. Any employee of a not-for-profit educational or residential child care institution who (a) on a daily basis is directly involved in educating or caring for children who (1) are orphans, foster children, abused, neglected or abandoned children, or are otherwise homeless children and (2) reside in residential facilities of the institution and (b) is compensated at an annual rate of not less than $13,000 or, if the employee resides in such facilities and receives without cost board and lodging from such institution, not less than $10,000.

I. Any employee employed as a crew member of any uninspected towing vessel, as defined by Section 2101(40) of Title 46 of the United States Code, operating in any navigable waters in or along the boundaries of the State of Illinois.

J. Any employee who is a member of a bargaining unit recognized by the Illinois Labor Relations Board and whose union has contractually agreed to an alternate shift schedule as allowed by subsection (b) of Section 7 of the Fair Labor Standards Act of 1938.

(3) Any employer may employ any employee for a period or periods of not more than 10 hours in the aggregate in any workweek in excess of the maximum hours specified in subsection (1) of this Section without paying the compensation for overtime employment prescribed in subsection (1) if during that period or periods the employee is receiving remedial education that:

(a) is provided to employees who lack a high school diploma or educational attainment at the eighth grade level;

(b) is designed to provide reading and other basic skills at an eighth grade level or below; and

(c) does not include job specific training.

(4) A governmental body is not in violation of subsection (1) if the governmental body provides compensatory time pursuant to paragraph (o) of Section 7 of the Federal Fair Labor Standards Act of 1938, as now or hereafter amended, or is engaged in fire protection or law enforcement activities and meets the requirements of paragraph (k) of Section 7 or

paragraph (b)(20) of Section 13 of the Federal Fair Labor Standards Act of 1938, as now or hereafter amended.

(Source: P.A. 92-623, eff. 7-11-02; 93-672, eff. 4-2-04.)

Passed in the General Assembly May 7, 2015.

Approved July 10, 2015.

Effective January 1, 2016.

PUBLIC ACT 99-0018
(Senate Bill No. 0086)

AN ACT concerning local government.

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

Section 5. The Counties Code is amended by changing Section 5-43035 as follows:

(55 ILCS 5/5-43035)

Sec. 5-43035. Enforcement of judgment.

(a) Any fine, other sanction, or costs imposed, or part of any fine, other sanction, or costs imposed, remaining unpaid after the exhaustion of or the failure to exhaust judicial review procedures under the Illinois Administrative Review Law are a debt due and owing the county and may be collected in accordance with applicable law.

(b) After expiration of the period in which judicial review under the Illinois Administrative Review Law may be sought for a final determination of a code violation, unless stayed by a court of competent jurisdiction, the findings, decision, and order of the hearing officer may be enforced in the same manner as a judgment entered by a court of competent jurisdiction.

(c) In any case in which a defendant has failed to comply with a judgment ordering a defendant to correct a code violation or imposing any fine or other sanction as a result of a code violation, any expenses incurred by a county to enforce the judgment, including, but not limited to, attorney's fees, court costs, and costs related to property demolition or foreclosure, after they are fixed by a court of competent jurisdiction or a hearing officer, shall be a debt due and owing the county and may be collected in accordance with applicable law. Prior to any expenses being fixed by a hearing officer pursuant to this subsection (c), the county shall provide notice to the defendant that states that the defendant shall appear

ADMINISTRATIVE CODE

TITLE 56: LABOR AND EMPLOYMENT
CHAPTER I: DEPARTMENT OF LABOR
SUBCHAPTER b: REGULATION OF WORKING CONDITIONS
PART 210 MINIMUM WAGE LAW
SECTION 210.110 DEFINITIONS

Section 210.110 Definitions

"Act" means Minimum Wage Law [820 ILCS 105].

"Agriculture" means farming in all of its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in Section 15(g) of the Agricultural Marketing Act, as amended (12 U.S.C. 1141 et seq.)), the raising of livestock, bees, fur-bearing animals, or poultry, and any practices (including forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market, but not the operation of processing such commodities and any activities subsequent to such operation. Agriculture shall not include the cultivation, growing, harvesting, or preparation for the storage or marketing of Christmas trees, as defined in the regulations promulgated under the Fair Labor Standards Act of 1938, at 29 C.F.R. 780.200 - 780.209 (1994, no subsequent dates or editions), as amended at 36 FR 12084. The phrase "incident to or in conjunction with" shall not include construction by a private contractor of farm buildings on a farm.

"Aquaculture" means the controlled propagation, growth and harvest of aquatic organisms, including but not limited to fish, shellfish, mollusks, crustaceans, algae, and other aquatic plants, as defined in the Aquaculture Development Act [20 ILCS 215].

"Compliance Officer" means an authorized representative of the Director who is charged with the duty to:

investigate and gather data regarding the wages, hours and other conditions and practices of employment in any industry subject to this Act; and

investigate such facts, conditions, practices or matters as the officer may deem necessary or appropriate to determine whether any person has violated any provision of this Act, or which may aid in the enforcement of this Act.

"Department" means the Illinois Department of Labor.

"Director" means the Director of the Department or a duly authorized representative.

"Domestic worker" has the definition ascribed to it in the Domestic Workers' Bill of Rights Act [820 ILCS 182].

"Employee" means any individual permitted or suffered to work by an employer.

The Director will consider the following factors as significant when determining whether an individual is an employee or an independent contractor:

the degree of control the alleged employer exercised over the individual;

the extent to which the services rendered by the individual are an integral part of the alleged employer's business;

the extent of the relative investments of the individual and alleged employer;

the degree to which the individual's opportunity for profit and loss is determined by the alleged employer;

the permanency of the relationship;

the skill required in the claimed independent operation.

The common law standards relating to master and servant, the parties' designations and terminology, and the individual's status for tax purposes, are not dispositive. Rather, it is the total activity or situation that is controlling. In the case of an individual employed by a public agency, such term means any individual employed by the State of Illinois or any of its political subdivisions except for an individual who is a bona fide elective or appointed official.

"Governmental body" means the State and its agencies, municipalities and units of local government, and school districts.

"Hours worked" means all the time an employee is required to be on duty, or on the employer's premises, or at other prescribed places of work, and any additional time the employee is required or permitted to work for the employer. In the context of domestic work, "hours worked" includes all time during which a domestic worker is not completely relieved of all work-related duties, regardless of the location where the domestic work is performed.

An employee's meal periods and time spent on-call away from the employer's premise are compensable hours worked when such time is spent predominantly for the benefit of the employer, rather than for the employee.

An employee's travel, performed for the employer's benefit (for example, in response to an emergency call back to work outside the employee's normal work hours, or at the employer's special request to perform a particular and unusual assignment, or as a part of the employee's primary duty, or in substitution of the employee's ordinary duties during normal hours) is compensable work time as defined in 29 CFR 785.33 – 785.41 (1994, no subsequent dates or editions), as amended at 26 FR 190.

"Immediate family", as used in Section 3(d)(1) of the Act, means a person related to a subject employer either by blood, marriage or adoption and living as part of the same household. An employer who employs fewer than four employees exclusive of the employer's parent, spouse or child or other immediate family member is not subject to the provisions of the Act or this Part unless the employee is a domestic worker as defined in 820 ILCS 182/10. The definition of "immediate family" contained in 820 ILCS 182/10 shall apply to such domestic workers.

"Including any radio or television announcer, news editor, or chief engineer, as defined by or covered by the Federal Fair Labor Standards Act of 1938", as used in Section 4a(2)(E) of the Act, means any employee employed as an announcer, news editor, or chief engineer by a radio or television station the major studio of which is located:

in a city or town of one hundred thousand population or less, according to the latest available decennial census figures as compiled by the Bureau of the Census, except where such city or town is part of a standard metropolitan statistical area, as defined and designated by the Bureau of the Budget, which has a total population in excess of 100,000; or

in a city or town of 25,000 population or less, which is part of such an area but is at least 40 airline miles from the principal city in such area, as defined in the Fair Labor Standards Act of 1938 (29 U.S.C. 213(b)(9)) and the regulations promulgated thereunder at 29 C.F.R. Part 793 (1995, no subsequent dates or editions), as amended at 26 FR 10275.

"Individuals whose capacity is impaired by age or physical or mental deficiency", as used in Section 5 of the Act and in Subpart E of this Part, means individuals whose earning or productive capacity are impaired by a physical or mental disability, including those relating to age or injury, for the work to be performed. Disabilities which may affect earning or productive capacity include blindness, mental illness, intellectual or developmental disability, cerebral palsy, alcoholism, and drug addiction. The following, taken by themselves, are not considered disabilities for the purposes of Section 5 of the Act and Subpart E of this Part: vocational, social, cultural, educational disabilities; chronic unemployment; receipt of welfare benefits; nonattendance at school; juvenile delinquency; and correctional parole or probation. Further, a disability which may affect earning or productive capacity for one type of work may not affect such capacity for another.

"Learners", as used in Section 6 of the Act and Subpart F of this Part, means individuals who are participating in a training program for an occupation in which they are employed. Such a training program must involve either formal instruction or on-the-job training during a period when the learners are entrusted with limited responsibility and are under supervision or guidance.

"Man-day" means any day during which an employee performs any agricultural labor for not less than one hour.

"A member of a religious corporation or organization" means an individual whose functions are spiritual or religious, such as a priest, rabbi, minister, nun, reverend or other such individuals who perform similar functions as their primary duties.

"Student learner", as used in Section 6 of the Act and Subpart F of this Part, means a student who receives course credit for participating in school-approved work-study programs.

"Tipped employee" means an employee engaged in an occupation in which gratuities are customarily recognized as part of the remuneration of such employee as referred to in Section 4(c) of the Act; an employee cannot be deemed a tipped employee unless the employee received $20 or more per month in gratuities.

"Volunteer" means a person who works for an employer under no contract of hire, expressed or implied, and with no promise of compensation, other than reimbursement for expenses as part of the conditions for work. A volunteer is not an employee for the purposes of this Act.

"Wages" means compensation due to an employee by reason of the employment including allowances determined by the Director in accordance with the provisions of this Act. These allowances shall include gratuities and, when customarily furnished by a group of employers to their employees, meals, lodging and other facilities. When the reasonable cost of these allowances is not recorded by the employer, the Director will determine the fair value of such meals, lodging or other facilities for defined classes of employees based on the average cost to the employer or groups of employers, or other appropriate measures of fair value. Such evaluations, when applicable and pertinent, shall be used in lieu of the actual measure of cost in determining the wage paid to any employee. In the context of domestic workers, the cost of lodging and meal credits are governed by the standards in Section 210.125(d).

(Source: Amended at 46 Ill. Reg. 14051, effective July 19, 2022)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

LISA JOHNSON AND GALE MILLER ANDERSON, on Behalf of Themselves and on Behalf of All Others Similarly Situated,	§	
	§	**Case No.: 1:23-CV-00685**
Plaintiffs,	§	
	§	**Honorable Judge Thomas M. Durkin**
V.	§	
	§	
AMAZON.COM SERVICES, LLC,	§	**JURY TRIAL DEMANDED**
	§	
Defendant.	§	

PLAINTIFFS' SECOND AMENDED CLASS AND COLLECTIVE ACTION COMPLAINT

I. INTRODUCTION

1. This is a class action lawsuit brought by Plaintiffs Lisa Johnson and Gale Miller Anderson ("Plaintiffs"), individually and on behalf of all others similarly situated ("Class Members") to recover unpaid wages, penalties, and attorneys' fees and costs. Defendant Amazon.Com Services, LLC ("Amazon") implemented an illegal policy requiring its non-exempt workers to undergo a COVID-19 screening each shift without pay. This physical and medical examination constitutes compensable time that was worked by the Plaintiffs, Illinois Class Members and FLSA Collective Action Members. By failing to pay for this time worked, Amazon has violated Illinois law. In addition to the Plaintiffs, Amazon has failed to pay for the time spent undergoing COVID-19 screenings by thousands of other workers across the State of Illinois.

2. Amazon's conduct violates the state laws of Illinois because, for the time Plaintiffs and other employees worked over forty (40) hours a week, Amazon failed to pay overtime wages as required by the Illinois Minimum Wage Law ("IMWL"). *See* 820 ILCS § 105/1 *et seq*.

3. Amazon's conduct also violates the state laws of Illinois because Amazon failed to pay Illinois employees all their earned wages as required by the Illinois Wage Payment and Collection Act ("IWPCA"). 820 ILCS 115/1 *et seq*.

4. Members of the Illinois class action are referred to hereinafter as the "Illinois Class Members."

5. Amazon's conduct also violates the Fair Labor Standards Act ("FLSA"), which requires non-exempt employees to be compensated for all hours worked in excess of forty in a workweek at one and one-half times their regular rate. *See* 29 U.S.C. § 207(a). On behalf of themselves and all others similarly situated employees, Plaintiffs bring this action as a collective action under the FLSA, 29 U.S.C. § 216(b). Members of the collective action are referred to hereinafter as the "FLSA Collective Members."

6. In the alternative to the claims they bring under the IWPCA, Plaintiffs allege Amazon's conduct violated Illinois law and they are owed compensation under the theory of Quantum Meruit.

II. JURISDICTION AND VENUE

7. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331 because the action involves a federal statute, the FLSA, 29 U.S.C §§ 201, *et seq*. The Court has supplemental jurisdiction over the state law wage and hour claims under 28 U.S.C. § 1367 because those claims derive from a common nucleus of operative fact.

8. Venue is proper in this District because a substantial portion of the events forming the basis of this suit occurred in or near Chicago, Illinois. Plaintiffs worked in this District and were denied wages in this District.

9. Amazon is subject to personal jurisdiction before this Court because it has

purposefully availed itself of the privileges of conducting activities in the State of Illinois and established minimum contacts sufficient to confer jurisdiction. Amazon does business in Illinois, advertises in Illinois, markets to Illinois consumers, and the violations of the law forming the basis of this lawsuit occurred in Illinois. Further, Amazon maintains offices in Illinois and employs Illinois residents. Therefore, the assumption of jurisdiction over Amazon will not offend traditional notions of fair play and substantial justice and is consistent with the constitutional requirements of due process.

10. This Court is empowered to issue a declaratory judgment and further relief pursuant to 28 U.S.C. §§ 2201 and 2202.

III. PARTIES AND PERSONAL JURISDICTION

11. Plaintiff Lisa Johnson is an individual residing in Chicago, Illinois. At all relevant times, Plaintiff Johnson has been domiciled in and is a resident of the State of Illinois. Her consent form to join this action is attached hereto as "Exhibit A."

12. Plaintiff Gale Miller Anderson is an individual residing in Chicago, Illinois. At all relevant times, Plaintiff Miller Anderson has been domiciled in and is a resident of the State of Illinois. Her consent form to join this action is attached hereto as "Exhibit B."

13. The "Illinois Class Members" are all current and former hourly paid employees of Amazon who underwent a COVID-19 screening during at least one week in Illinois in the three-year period before the filing of the Original Complaint until final resolution of this Action.

14. The "FLSA Collective Members" are all current and former hourly paid employees of Amazon who underwent a COVID-19 screening during at least one week in Illinois in the three-year period before the filing of the Original Complaint until final resolution of this Action.

15. The Illinois Class Members and the FLSA Collective Members shall be collectively

referred to as the "Class Members."

16. Defendant Amazon.com Services, LLC is a Delaware limited liability company with its principal place of business located in Seattle, Washington. Defendant has been served and has made an appearance in this case.

17. At all material times, Amazon was and is legally responsible for the unlawful conduct, policies, practices, acts, and omissions as described and set forth in this Complaint, as the employer of Plaintiffs and the Class Members.

18. At all material times, Amazon has been governed by and subject to the FLSA, 29 U.S.C. § 207.

19. At all material times, Amazon has been an employer within the meaning of section 3(d) of the FLSA. 29 U.S.C. § 203(d).

20. At all material times, Amazon has been an enterprise within the meaning of section 3(r) of the FLSA. 29 U.S.C. § 203(r).

21. At all material times, Amazon has been an enterprise engaged in commerce or in the production of goods for commerce within the meaning of section 3(s)(1) of the FLSA because Amazon has had and continues to have employees engaged in commerce. 29 U.S.C. § 203(s)(1). At all material times, the unlawful conduct against Plaintiffs and the Class Members as described in this Complaint was actuated, in whole or in part, by a purpose to serve Amazon. At all relevant times, the unlawful conduct described in this Complaint was reasonably foreseeable by Amazon and committed under actual or apparent authority granted by Amazon such that all unlawful conduct is legally attributable to Amazon.

22. At all material times, Amazon has had an annual gross business volume of not less than $500,000.

23. At all material times, Amazon was and is legally responsible for the unlawful conduct, policies, practices, acts, and omissions as described and set forth in this Complaint, as the employer of Plaintiffs and Class Members. *See* Illinois Minimum Wage Law, 820 ILCS § 105/3(c); Illinois Wage Payment and Collection Act, 820 ILCS § 115/2.

24. At all material times, Plaintiffs and Class Members were employees of Amazon within the meaning of the Illinois Minimum Wage Law and the Illinois Wage Payment and Collection Act. 820 ILCS § 105/3; 820 ILCS § 115/2.

IV. FACTS

25. The novel Coronavirus has infected over 100 million Americans and caused the death of over one million Americans. (*See* https://coronavirus.jhu.edu/us-map, last visited February 24, 2023).[1] Following the outbreak of the Coronavirus, Amazon implemented a company-wide policy requiring each of its hourly, non-exempt employees to undergo a physical and medical examination to check for symptoms of the Coronavirus each shift. This examination was imposed by Amazon as a requirement to work each shift. The examination was conducted on the premises of Amazon, was required by Amazon, and was necessary for each employee to perform his/her work for Amazon. Amazon did not pay employees for the time they spent undergoing the examination. Amazon's conduct violates Illinois law.

26. Amazon operates fulfillment centers and distribution centers in Illinois and across the country. These Amazon facilities are large warehouses that normally operate 24 hours per day. These Amazon facilities are the warehouses where Amazon stores the packages that are delivered to customers. Upon information and belief, Amazon employs more than 20,000

[1] In Illinois, the Coronavirus has infected nearly four million Illinois residents, and has resulted in approximately 40,000 confirmed deaths. (*See* https://coronavirus.jhu.edu/region/us/illinois, last visited October 25, 2022).

workers in Illinois at distribution centers and fulfillment centers throughout the state.

27. Plaintiff Johnson worked for Amazon as an hourly, non-exempt employee at the delivery center in Chicago, Illinois. She worked from approximately January 2019 to May 2021. She worked for Amazon as an order picker and packer. Her job duties included moving boxes, stacking packages, and loading boxes. Plaintiff Johnson primarily worked a schedule from Monday to Friday between 10:00 p.m. to 6:00 a.m. or 11:00 p.m. to 7:00 a.m. On occasion, Plaintiff Johnson also worked on Saturdays or Sundays. In one or more individual workweeks during her employment, Plaintiff Johnson worked 40 or more hours. When adding the unpaid work described in this Complaint, Plaintiff Johnson regularly worked more than 40 hours each week she went through a COVID-19 screening.

28. Plaintiff Johnson worked with hundreds of other Amazon workers at the Chicago fulfillment center locations.

29. Plaintiff Miller Anderson worked for Amazon as an hourly, non-exempt employee in Joliet, Illinois and in Chicago, Illinois. She worked from approximately October 2017 to October 2021. She worked as a fulfillment center associate. Her job duties included moving boxes, stacking packages, and loading boxes. She worked a schedule that was four days on and three days off. Each shift was scheduled for 11 hours and was normally 7:00 a.m. to 6:00 p.m. Thus, she normally worked more than 40 hours per week.

30. Plaintiff Miller Anderson worked with hundreds of other Amazon workers at the Joliet and Chicago fulfillment center locations.

PLAINTIFFS AND CLASS MEMBERS WERE NOT PAID FOR ALL WORK TIME AS A RESULT OF COMPLETING COVID-19 SCREENINGS "OFF THE CLOCK"

31. As an hourly, non-exempt employee, Amazon agreed to pay Plaintiffs an hourly rate of pay for the time they worked at Amazon's facility.

32. Amazon required Plaintiffs to clock-in and clock-out each day.

33. Following the outbreak of the Coronavirus, Amazon prevented Plaintiffs from clocking in when they first arrived at Amazon's facility.

34. Instead, prior to allowing Plaintiffs to clock in each day, Amazon required Plaintiffs to undergo a physical and medical examination to screen for symptoms of COVID-19.

35. Although the COVID-19 screening was required by Amazon, Amazon did not pay any of its employees, including Plaintiffs, for the time spent undergoing the COVID-19 screening.

36. In addition, there were times that Plaintiff Miller Anderson reported to Amazon's facility prior to her scheduled start time, but Amazon's COVID-19 screening prevented her from clocking in until after her scheduled start time. In instances when Plaintiff Miller Anderson clocked in late due to Amazon's COVID-19 screen, Plaintiff Miller Anderson suffered a loss of the wages Amazon agreed to pay her.

37. As a direct result of Amazon's COVID-19 screening, Amazon did not pay Plaintiffs and other Class Members for all hours they worked at Amazon's facilities.

38. Prior to the start of their shifts, Amazon employees were required to form a line at the entrance to the facility and to stand six feet apart. Amazon employees were then called one-by-one to a checkpoint where the COVID-19 screening took place. Each employee whose shift was set to begin was required to undergo a temperature check and to answer questions about his/her health. If the employee passed the examination, he/she was then given a mask to wear. After putting on the mask, the employee then walked to the next station where the employee was allowed to clock-in for the day.

39. The amount of time it takes to wait in line and undergo the COVID-19 examination

was approximately 10 minutes to 15 minutes on average. This amount of time could be longer depending upon the number of other Amazon employees in line for the COVID-19 screening. The COVID-19 screening occurred each day at each Amazon facility in Illinois and no Amazon employee could work without first passing the COVID-19 screening.

40. Plaintiffs know and are aware that other Amazon facilities in Illinois have COVID-19 screening procedures because there were multiple notices posted around the facility indicating that COVID-19 screening and prevention practices were being instituted across Amazon at a corporate-wide level.

41. This COVID-19 screening should have been paid by Amazon because it constitutes compensable time worked. During this time, Plaintiffs and Class Members were subject to Amazon's control.

42. Plaintiffs and the Class Members were required to follow Amazon's instructions while awaiting and during the COVID-19 screening. Amazon required every employee to complete the COVID-19 screening and it was not optional. Indeed, the COVID-19 screening was required by Amazon and its employees were required to comply under threat of discipline, including possible termination.

43. Additionally, Plaintiffs and the Class Members were confined to the premises of Amazon when they waited for the examination and during the examination.

44. Moreover, Amazon compelled its employees to perform specific tasks during the examinations. They were required to answer questions, submit to have their temperature taken, and wear masks.

45. In other words, Amazon directed, commanded, and restrained its employees during the COVID-19 examinations; prevented them from using that time effectively for their own

purposes; and Plaintiffs and the Class Members remained subject to Amazon's control during the examinations.

46. The COVID-19 screenings were also necessary to the principal work performed by Plaintiffs and the Class Members and were necessary to ensure a safe workplace. The COVID-19 examinations were also undertaken on Amazon's premises, were controlled and required by Amazon, and undertaken primarily for the benefit of Amazon.

47. Indeed, Amazon required Plaintiffs and the Class Members to undergo this screening for the purposes of overall safety in the Amazon facilities and to prevent Plaintiffs and the Class Members from inadvertently and unintentionally infecting the Amazon facilities or Amazon products, and in turn, Amazon's customers. Likewise, the job duty of Plaintiffs and the Class Members was to serve the customers of Amazon and the screening was necessary to ensure that Plaintiffs and the Class Members safely provide that service to Amazon's customers.

48. The COVID-19 examinations were necessary to ensure that the virus did not infect the Amazon facilities or customers. The examinations were also necessary to ensure that the virus did not disrupt the work performed by Plaintiffs and the Class Members or affect the business operations of Amazon. If Amazon did not have the COVID-19 screening, workers could inadvertently or unintentionally bring the virus into the Amazon facilities causing a mass breakout of the virus infecting hundreds to thousands of other workers of Amazon. Plaintiffs and the Class Members could not perform their work for Amazon if there was a mass breakout of the virus at the Amazon facilities. Furthermore, the COVID-19 virus directly affects the health of workers. If Plaintiffs and the Class Members became infected with the virus, their health would suffer. Symptoms of the virus include fatigue, lack of strength, coughing, headaches, and other symptoms. Plaintiffs and the Class Members could not perform their work for Amazon if they

were infected with the virus.

49. Moreover, the COVID-19 screenings were integral and indispensable to the principal activity and primary job duty performed by Plaintiffs and the Class Members, which was to serve and assist Amazon customers receiving their purchased items. The COVID-19 screenings were necessary for Plaintiffs and Class Members to perform their primary job duty for Amazon. If Amazon cancelled the COVID-19 screenings, the Amazon facilities could get contaminated with the virus, the items that Amazon sold could get contaminated with the virus, the customers could get infected, and other employees of Amazon could get infected. In that event, Amazon's business would be disrupted, and Plaintiffs and Class Members would not be able to do their work. Therefore, the COVID-19 screenings were necessary to ensure that Plaintiffs and Class Members could do their jobs for Amazon.

50. The COVID-19 screenings were also integral and indispensable to the principal activity and primary job duty performed by Plaintiffs and the Class Members because the COVID-19 screenings were necessary to ensure that Amazon workers could perform their work safely, to prevent contamination from the virus, and to keep the customers of Amazon safe. If employees became infected with the virus, they would not be able to provide their services to Amazon. Moreover, if Amazon customers received packages that were infected with the virus, the customers would likely no longer use Amazon's services.

51. Thus, the COVID-19 screenings were necessary for the Plaintiffs and Class Members to do their work for Amazon and without the screenings, their ability to do their jobs would have been compromised. Plaintiffs and the Class Members could not skip the screenings altogether without the safety or effectiveness of their principal activities being substantially impaired. The screenings prevented the COVID-19 virus from spreading through Amazon's

facilities and infecting employees and products, thereby allowing Amazon employees to continue to work.

52. Under these facts, the COVID-19 screenings were also for the benefit of Amazon and its customers. The COVID-19 screenings allowed Amazon's operations to continue and therefore, allowed Amazon to earn a profit. Similarly, the COVID-19 screenings benefited Amazon's customers by allowing them to receive products in a timely basis and to receive products that were not contaminated. Indeed, the COVID-19 screenings were conducted by Amazon with the intent for Amazon to benefit, to earn more profits, and to continue its business. In fact, Amazon's business substantially grew during the pandemic and it appears that the pandemic provided a windfall for Amazon's operations.

53. The COVID-19 screenings were also primarily for the benefit of Amazon because Amazon's COVID-19 screening policy was intended to keep its fulfillment centers and distribution centers as safe of a workplace as possible given the circumstances of the global pandemic. Amazon's COVID-19 screening policy was also intended to ensure the safety of Amazon's workers and to ensure that Amazon complied with the law. By making the workplace safe, Amazon increased the efficiency of Amazon's operations and allowed it to make billions in profits during the pandemic. Indeed, having business operations continue without interruption undoubtedly increased the profits of Amazon. Similarly, complying with all laws ensured Amazon could continue to operate and earn profits. Moreover, having employees who are healthy and able to perform their work ensures that Amazon can continue to operate and earn profits.

54. The COVID-19 screenings were to ensure that the virus did not disrupt the work performed by the Plaintiffs/Class Members or affect the business operations of Amazon. If

Amazon facilities suffered an infection outbreak, Amazon would potentially have to find new employees or shut down its warehouses until it was safe to open again. Such an outbreak would harm Amazon directly and cause it to lose significant profits. Given this substantial risk to Amazon's business operations, Amazon primarily benefitted from the COVID-19 screenings.

55. Under Illinois law, "hours worked" includes "all the time an employee is required to be on duty, or on the employer's premises, or at other prescribed places of work, and any additional time he or she is required or permitted to work for the employer." 56 Ill. Admin. Code § 210.110.

56. Amazon's requirement for its employees to complete a COVID-19 screening prior to clocking in each shift constitutes "hours worked" under Illinois law. *See Boone v. Amazon*, 562 F.Supp.3d 1103 (E.D. Cal. 2022) (holding that time spent completing COVID-19 screenings is compensable under similar California state law).

57. Similarly, the time spent completing the COVID-19 screenings is compensable under the FLSA.

58. The Department of Labor has issued regulations stating that physical and health examinations, like the COVID-19 examination, constitutes time that should be paid for by employers. *See* 29 CFR § 785.43.

> In an opinion letter, the Department of Labor has further stated as follows: Time spent undergoing a physical examination is time during which the employee's freedom of movement is restricted for the purpose of serving the employer and time during which the employee is subject to the employer's discretion and control. It is immaterial whether the time spent in undergoing the required physical examination is during the employee's normal working hours or during nonworking hours. The physical examination is an essential requirement of the job and thus primarily for the benefit of the employer. **Therefore, it is our opinion that the time so spent must be counted as hours worked under the FLSA.**

DOL Wage and Hour Opinion Letter, January 26, 1998 (emphasis added).

59. In light of Amazon's conduct, Plaintiffs and Class Members are owed significant unpaid wages and penalties.

60. Plaintiffs and Class Members are and were non-exempt employees.

61. Plaintiffs and Class Members are paid on an hourly rate basis.

62. When they work more than forty (40) hours in a workweek, they are entitled to overtime pay.

63. The COVID-19 screenings identified above were not incidental activities for the Plaintiffs and Class Members, but instead, this time was integral and indispensable to their principal activity, was controlled by Amazon, was required by Amazon, was conducted on Amazon's premises, and was performed primarily for the benefit of Amazon and its customers. Therefore, the time spent by the Plaintiffs and Class Members completing the COVID-19 screenings is compensable.

64. Although Amazon employs electronic "clocking-in" technology, this technology was not made accessible to Plaintiffs and Class Members before the COVID-19 screenings.

65. As a result of Amazon's company-wide policies, Plaintiffs and Class Members were not paid for all time worked each day and are owed significant unpaid wages.

66. Amazon's method of paying Plaintiffs and Class Members in violation of Illinois law and federal law was willful and was not based on a good faith and reasonable belief that their conduct complied with the law. Amazon knew the requirement to pay for all time worked, but intentionally and/or recklessly chose not to do so.

V. RULE 23 CLASS ACTION ALLEGATIONS

67. Plaintiffs bring this action as a class action pursuant to Rule 23 of the Federal Rules

of Civil Procedure on behalf of the Illinois Class, which is comprised of:

Illinois Minimum Wage Law Class

> **All current and former hourly paid employees of Amazon who underwent a COVID-19 screening and worked at least 40 hours during at least one week in Illinois in the three-year period before the filing of the Original Complaint to final resolution of this Action.**

Illinois Wage Payment and Collection Act Class

> **All current and former hourly paid employees of Amazon who underwent a COVID-19 screening in Illinois.**

68. In the alternative to the claim filed under the Illinois Wage Payment and Collection Act, Plaintiffs bring a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of a Quantum Meruit Class, which is comprised of:

Quantum Meruit Class

> **All current and former hourly paid employees of Amazon who underwent a COVID-19 screening in Illinois.**

69. Numerosity: The number of members in the Illinois Class is believed to exceed forty (40) and in fact, is likely to be in the thousands. This volume makes bringing the claims of each individual member of the Illinois Class before this Court impracticable. Likewise, joining each individual member of the Illinois Class as a plaintiff in this action is impracticable. Furthermore, the identity of the members of the Illinois Class will be determined from Amazon's records, as will the compensation paid to each of them. As such, a class action is a reasonable and practical means of resolving these claims. To require individual actions would prejudice the Illinois Class Members and Amazon.

70. Typicality: Plaintiffs' claims are typical of the Illinois Class Members' claims because like the members of the Illinois Class, Plaintiffs were subject to Amazon's uniform

policies and practices and were compensated in the same manner as others in the Illinois Class. Amazon failed to pay the Illinois Class Members for all overtime hours they worked. Additionally, members of the Illinois Class worked substantially more than forty (40) hours in a week as non-exempt employees. Accordingly, Plaintiffs and the Illinois Class Members have been uncompensated and/or under-compensated as a result of Amazon's common policies and practices which failed to comply with Illinois law. As such, Plaintiffs' claims are typical of the claims of the Illinois Class Members. Plaintiffs and all members of the Illinois Class sustained damages arising out of and caused by Amazon's common course of conduct in violation of law as alleged herein.

71. Adequacy: Plaintiffs are representative parties who will fairly and adequately protect the interests of the Illinois Class Members because it is in their interest to effectively prosecute the claims herein alleged in order to obtain the unpaid wages and penalties required under Illinois law. Plaintiffs have retained attorneys who are competent in both class actions and wage-and-hour litigation. Plaintiffs do not have any interest which may be contrary to or in conflict with the claims of the Illinois Class Members they seek to represent.

72. Commonality: Common issues of fact and law predominate over any individual questions in this matter. The common issues of fact and law include, but are not limited to:

a. Whether Plaintiffs and the Illinois Class Members are entitled to compensation for the time spent in the COVID-19 screenings;

b. The amount of time spent in the COVID-19 screenings;

c. Whether Plaintiffs and the Illinois Class Members worked more than forty (40) hours in a workweek;

d. Whether Amazon failed to pay Plaintiffs and the Illinois Class Members wages

for all overtime hours worked; and

e. The proper measure of damages sustained by Plaintiffs and the Illinois Class Members.

73. Superiority: A class action is superior to other available means for the fair and efficient adjudication of this lawsuit. Even in the event any member of the Illinois Class could afford to pursue individual litigation against a company the size of Amazon, doing so would unduly burden the court system. Individual litigation would magnify the delay and expense to all parties and flood the court system with duplicative lawsuits. Prosecution of separate actions by individual members of the Illinois Class would create the risk of inconsistent or varying judicial results and establish incompatible standards of conduct for Amazon.

74. A class action, by contrast, presents far fewer management difficulties and affords the benefits of uniform adjudication of the claims, financial economy for the parties, and comprehensive supervision by a single court. By concentrating this litigation in one forum, judicial economy and parity among the claims of individual Illinois Class Members are promoted. Additionally, class treatment in this matter will provide for judicial consistency. Notice of the pendency and any resolution of this action can be provided to the Illinois Class Members by mail, electronic mail, text message, print, broadcast, internet and/or multimedia publication. The identity of the members of the Illinois Class is readily identifiable from Amazon's records.

75. This type of case is well-suited for class action treatment because: (1) Amazon's practices, policies, and/or procedures were uniform; (2) the burden is on Amazon to prove it properly compensated its employees including any potential exemptions that might apply; and (3) the burden is on Amazon to accurately record hours worked by employees. Ultimately, a class

action is a superior form to resolve the Illinois claims detailed herein because of the common nucleus of operative facts centered on the continued failure of Amazon to pay Plaintiffs and the Class per applicable Illinois laws.

VI. COLLECTIVE ACTION ALLEGATIONS

76. Plaintiffs have actual knowledge that the FLSA Collective Members have also been denied pay for hours worked over forty (40) per workweek. Plaintiffs worked with and communicated with other hourly, non-exempt employees and as such, have personal knowledge of their existence, status as Amazon's employees, pay structure, and the overtime violations.

77. Amazon has employed numerous other employees throughout Illinois during the last three years, who were paid on an hourly basis, were classified as not exempt from overtime, and who underwent the COVID-19 medical screening without pay.

78. As such, the "FLSA Collective" is properly defined as follows:

> **All current and former hourly paid employees of Amazon who underwent a COVID-19 screening and worked at least 40 hours during at least one week in the three-year period before the filing of this Complaint to the present.**

79. Although Amazon permitted and/or required the FLSA Collective Members to work in excess of forty (40) hours per workweek, Amazon has denied them compensation for their hours worked over forty (40).

80. Plaintiffs are representatives of the FLSA Collective in that they were classified as non-exempt from overtime, were paid on an hourly basis and underwent the COVID-19 screening without pay. Plaintiffs are acting on behalf of the FLSA Collective's interests as well as Plaintiffs' own interests in bringing this action.

81. The FLSA Collective Members were classified as non-exempt.

82. The FLSA Collective Members were paid on an hourly basis.

83. The FLSA Collective Members underwent the COVID-19 screenings.

84. The FLSA Collective Members regularly work or have worked in excess of forty (40) hours during a workweek.

85. The FLSA Collective Members were not paid for the time spent in the COVID-19 screenings.

86. The policy of failing to pay for the time spent in the COVID-19 screenings is universal across the defined FLSA Collective and forms the basis of the overtime violation.

87. The FLSA Collective Members are not exempt from receiving overtime pay under the FLSA.

88. As such, the FLSA Collective Members are similar to the Plaintiffs in terms of pay structure and/or the denial of overtime compensation.

89. Amazon's failure to pay overtime compensation at the rate required by the FLSA results from generally applicable policies or practices and does not depend on the personal circumstances of the FLSA Collective Members.

90. The experiences of the Plaintiffs with respect to their pay and process for completing the COVID-19 screenings is typical of the experiences of the FLSA Collective Members.

91. The specific job titles or precise job responsibilities of each FLSA Collective Member does not prevent collective treatment.

92. All FLSA Collective Members, irrespective of their particular job requirements, are entitled to overtime compensation at the rate of time and a half for hours worked in excess of forty (40) during a workweek.

93. Although the exact amount of damages may vary among FLSA Collective Members, the damages can be easily calculated by a simple formula. The claims of all FLSA Collective Members arise from a common nucleus of facts. Liability is based on a systematic course of wrongful conduct by Amazon that caused harm to all FLSA Collective Members.

94. The similarly situated FLSA Collective Members are known to Amazon, are readily identifiable, and can be located through Amazon's records. They should be notified and allowed to opt into this action pursuant to 29 U.S.C. § 216(b) for the purpose of collectively adjudicating their claims for overtime compensation, liquidated damages and/or prejudgment interest, and attorneys' fees and costs.

95. Unless the Court promptly issues such notice, the numerous similarly situated workers nationwide will be unable to secure unpaid overtime pay, which has been unlawfully withheld by Amazon.

VII. CAUSES OF ACTION

FIRST CLAIM FOR RELIEF

Failure to Pay Overtime as Required by the Illinois Minimum Wage Law

96. All previous paragraphs are incorporated as though fully set forth herein.

97. The Illinois Minimum Wage Law ("IMWL") entitles covered employees to overtime compensation of not less than one and one-half ($1^1/_2$) times the employee's regular rate of pay for all hours worked in excess of forty (40) in one workweek. *See* 820 Ill. Comp. Stat § 105/4a(1).

98. Amazon is subject to the IMWL's overtime requirements because Amazon is an employer under 820 Ill. Comp. Stat § 105/3(c).

99. During all relevant times, Plaintiffs and the Illinois Class Members were covered employees entitled to the above-described IMWL protections. *See* 820 Ill. Comp. Stat. § 105/3(d).

100. Plaintiffs and the Illinois Class Members are not exempt from the IMWL.

101. Plaintiffs and the Illinois Class Members routinely worked in excess of 40 hours per workweek.

102. As described in the foregoing paragraphs, Amazon's compensation policies and practices are in violation of the IMWL. *See* 820 ILCS § 115/1 *et seq*.

103. Amazon knowingly failed to compensate Plaintiffs and the Illinois Class Members for all hours worked and hours worked in excess of forty (40) hours in a workweek, in violation of the IMWL. *See* 820 Ill. Comp. Stat. § 105/4a(1).

104. Pursuant to 820 Ill. Comp. Stat. § 105/12(a), employers such as Amazon who fail to pay an employee wages in conformance with the IMWL, shall be liable to the employee for, inter alia, unpaid wages for three years prior to the filing of the lawsuit, statutory penalties in the amount of five percent (5%) per month of the amount of underpayment, and reasonable attorneys' fees and costs.

SECOND CLAIM FOR RELIEF

Violation of the Illinois Wage Payment and Collection Act

105. All previous paragraphs are incorporated as though fully set forth herein.

106. This count arises under the Illinois Wage Payment and Collection Act for Amazon's failure and refusal to pay Plaintiffs and Illinois Class Members for all the wages they earned.

107. The Illinois Wage Payment and Collection Act ("IWPCA") requires employers to pay employees all wages earned within 13 days after the end of a semi-monthly or bi-weekly pay period or within seven days after a weekly pay period in full at the lawful rate. *See* 820 Ill. Comp. Stat. § 115/4.

108. If an employer fails to pay an employee all wages earned by the statutory deadline, the employee may commence a civil action to recover the amount of any underpayment and damages in the amount of five percent (5%) of each underpayment compounded monthly, plus costs and reasonable attorneys' fees. *See* 820 Ill. Comp. Stat. § 115/14.

109. Pursuant to 735 Ill. Comp. Stat. § 5/13-206, the statute of limitations applicable to the IWPCA is ten years after accrual of the cause of action.

110. Amazon agreed to pay Plaintiffs an hourly rate of pay for the time they spent performing the duties and/or tasks Amazon directed them to perform.

111. Amazon agreed to pay Illinois Class Members an hourly rate of pay for the time they spent performing the duties and/or tasks Amazon directed them to perform.

112. During the course of their employment with Amazon, and as a result of Amazon's COVID-19 screen, Amazon did not compensate Plaintiffs for all time they spent performing the duties and/or tasks Amazon directed them to perform.

113. Amazon also failed to pay other Illinois Class Members for all time they spent performing the duties and/or tasks Amazon directed them to perform.

114. Amazon's actions, policies and/or practices as described above violate the IWPCA by failing to compensate Plaintiffs and the Illinois Class Members for all wages they earned.

115. As a direct and proximate result of this practice, Plaintiffs and the Illinois Class Members have suffered loss of income and other damages to be determined at trial.

116. As such, Plaintiffs and the Illinois Class Members are entitled to the underpayment, damages in the amount of five percent (5%) per month of the amount of the underpayment, and reasonable attorneys' fees and costs. *See* 820 Ill. Comp. Stat. § 115/14.

THIRD CLAIM FOR RELIEF

Violation of the Fair Labor Standards Act

117. Plaintiffs incorporate all preceding paragraphs as though fully set forth herein.

118. The FLSA requires each covered employer, such as Amazon, to compensate all non-exempt employees at a rate of not less than one-and-a-half times their regular rate of pay for work performed in excess of forty (40) hours in a workweek.

119. Plaintiffs and the FLSA Collective Members were entitled to be paid overtime compensation for all overtime hours worked at the rate of one and one-half times their regular rate of pay.

120. At all relevant times, Amazon required and/or permitted Plaintiffs and the FLSA Collective Members to work in excess of forty (40) hours per workweek. Despite the hours worked by them, Amazon willfully, in bad faith, and knowingly violated the FLSA, failed and refused to pay Plaintiffs and the FLSA Collective Members the appropriate overtime wages for all compensable time worked in excess of forty (40) hours per workweek.

121. Plaintiffs and the FLSA Collective Members were not paid the full amount of overtime wages due under the FLSA as a result of Amazon's failure and refusal to classify the time spent in the COVID-19 screening as compensable time.

122. By failing to compensate Plaintiffs and the FLSA Collective Members at a rate of not less than one-and-a-half times the regular rate of pay for work performed in excess of forty

(40) hours in a workweek, Amazon has violated the FLSA, 29 U.S.C. § 201 *et seq.*, including 29 U.S.C. § 207(a).

123. Plaintiffs and the FLSA Collective Members seek recovery of their damages, unpaid overtime pay, liquidated damages, attorneys' fees, costs and expenses.

124. The foregoing conduct, as alleged, constitutes a willful violation of the FLSA, within the meaning of 29 U.S.C. § 255(a).

FOURTH CLAIM FOR RELIEF

Quantum Meruit (Pleaded in the Alternative to the IWPCA Count)

125. Amazon implemented a company-wide policy requiring each of its hourly, non-exempt employees to undergo a physical and medical examination to check for symptoms of the Coronavirus each shift. This examination was imposed by Amazon as a requirement to work each shift. The examination was conducted on the premises of Amazon, was required by Amazon, and was necessary for each employee to perform his/her work for Amazon.

126. Amazon did not pay employees for the time they spent undergoing the COVID-19 screenings.

127. Plaintiffs and other current and former hourly paid employees of Amazon who underwent a COVID-19 screening in Illinois (the Quantum Meruit Class) provided and furnished Amazon their valuable time and services by submitting to required COVID-19 screenings.

128. Amazon benefitted from the time Plaintiffs and the Quantum Meruit Class spent in COVID-19 screenings.

129. It would be unjust for the Amazon to retain the benefit of Plaintiffs' time and the time of the Quantum Meruit Class spent in Amazon's required COVID-19 screenings without paying for such time.

130. Plaintiffs and the Quantum Meruit Class, by providing unpaid labor, conveyed a benefit to Amazon which Amazon knowingly received.

131. Instead of incurring significant business, operating, and labor costs by paying for these services, Amazon knowingly shifted that responsibility, risk, and considerable cost to Plaintiffs and the Quantum Meruit Class. As a result, Amazon was unjustly enriched because those shifted costs were borne and absorbed by Plaintiffs and the Quantum Meruit Class.

132. Amazon is not entitled to this benefit without payment to Plaintiffs and the Quantum Meruit Class, and retention of such benefits, without payment, would be unjust to Plaintiffs and the Quantum Meruit Class.

133. By the course of conduct set forth above, Amazon is liable to Plaintiffs and the Quantum Meruit Class under Quantum Meruit.

134. Due to Amazon's actions, Plaintiffs and the Quantum Meruit Class are entitled to recover all of their unpaid regular (but not overtime) compensation, and such other legal and equitable relief stemming from Amazon's conduct.

VIII. JURY DEMAND

135. Plaintiffs hereby demand a trial by jury on all issues.

IX. PRAYER FOR RELIEF

Plaintiffs, individually and on behalf of all Class Members, pray that the Court:

1. Certify that this action may proceed as a class action under Fed. R. Civ. P. 23;
2. Certify that this action may proceed as a collective action under 29 U.S.C. § 216(b);
3. Appoint Plaintiffs as Representatives of the Illinois Class and FLSA Collective, and appoint their counsel as Class Counsel;
4. Find and declare that Amazon's policies and/or practices described above violate

Illinois law;

5. Award all unpaid wages, unpaid overtime, liquidated damages, penalties, interest, and/or restitution to be paid by Amazon for the causes of action alleged herein;

6. Award costs, and expenses, including reasonable attorneys' fees and expert fees;

7. Award pre-judgment and post-judgment interest, as provided by law; and

8. Order such other and further legal and equitable relief the Court deems just, necessary and proper.

Date: February 28, 2023

Respectfully submitted,

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

LISA JOHNSON and GALE MILLER ANDERSON, individually and on behalf of all other similarly situated, Plaintiffs, v. AMAZON.COM SERVICES, LLC, Defendant.	No. 23 C 685 Judge Thomas M. Durkin

MEMORANDUM OPINION AND ORDER

Plaintiffs allege that Amazon failed to pay them for time spent being screened for COVID, in violation of: the Fair Labor Standards Act, the Illinois Minimum Wage Law, and the Illinois Wage Payment Collection Act. Amazon has moved to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim. That motion is granted.

Legal Standard

A Rule 12(b)(6) motion challenges the "sufficiency of the complaint." *Gunn v. Cont'l Cas. Co.*, 968 F.3d 802, 806 (7th Cir. 2020). A complaint must provide "a short and plain statement of the claim showing that the pleader is entitled to relief," Fed. R. Civ. P. 8(a)(2), sufficient to provide defendant with "fair notice" of the claim and the basis for it. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). This standard "demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). While "detailed factual

allegations" are not required, "labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555. The complaint must "contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 570). "Facial plausibility exists 'when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.'" *Thomas v. Neenah Joint Sch. Dist.*, 74 F.4th 521, 523 (7th Cir. 2023) (quoting *Iqbal*, 556 U.S. at 678). In applying this standard, the Court accepts all well-pleaded facts as true and draws all reasonable inferences in favor of the non-moving party. *See Hernandez v. Ill. Inst. of Tech.*, 63 F.4th 661, 666 (7th Cir. 2023).

Background

Plaintiffs worked at an Amazon warehouse in Chicago. Their "job duties included moving boxes, stacking packages, and loading boxes." With the COVID outbreak, Amazon began requiring employees "to undergo a temperature check and to answer questions about [their] health. If the employee passed the examination, he/she was then given a mask to wear." This process took "approximately" 10-15 minutes.

Plaintiffs allege that the "COVID-19 screenings were . . . necessary to the principal work performed by Plaintiffs and the Class Members and were necessary to ensure a safe workplace." They also allege that "Amazon required Plaintiffs and the Class Members to undergo this screening for the purposes of overall safety in the Amazon facilities and to prevent Plaintiffs and the Class Members from inadvertently

and unintentionally infecting the Amazon facilities or Amazon products, and in turn, Amazon's customers."

Analysis

I. Fair Labor Standards Act ("FLSA")

The FLSA's minimum wage and overtime compensation requirements do not apply to "activities which are preliminary to or postliminary to" the "principal activity or activities which [the] employee is employed to perform." 29 U.S.C. § 254(a). "The Supreme Court consistently has interpreted 'principal activity' to include all activities which are 'integral and indispensable' to the principal activity." *Chagoya v. City of Chicago*, 992 F.3d 607, 618 (7th Cir. 2021) (quoting *Integrity Staffing Sols., Inc. v. Busk*, 574 U.S. 27, 33 (2014)). The Supreme Court has also held that an activity is "integral and indispensable to the principal activities that an employee is employed to perform if it is an intrinsic element of those activities and one with which the employee cannot dispense if he is to perform his principal activities." *Busk*, 574 U.S. at 33.

Supreme Court precedent provides examples. For instance, the time meat-packers spend sharpening their knives is "integral and indispensable." *See Busk*, 574 U.S. at 518 (citing *Mitchell v. King Packing Co.,* 350 U.S. 260, 262 (1956)). So is changing clothes and showering for workers dealing with toxic materials. *See Busk*, 574 U.S. at 518 (citing *Steiner v. Mitchell,* 350 U.S. 247, 252-53 (1956)). However, the time spent by meat-processing plant workers *waiting* for the opportunity to dress in protective gear was not compensable because it was "two steps removed from the

productive activity on the assembly line." *See Busk*, 574 U.S. at 518 (quoting *IBP, Inc. v. Alvarez*, 546 U.S. 21, 42 (2005)). Furthermore, the time warehouse workers spent "undergoing post-shift security screenings," i.e., to check whether they were stealing, was not part of their principal activity "to retrieve products from warehouse shelves and package those products for shipment." *See Busk*, 574 U.S. at 518. Neither was a pre-shift search of employees in a "rocket-powder plant" when they were searched "for matches, spark producing devices such as cigarette lighters, and other items which have a direct bearing on the safety of the employees." *See Busk*, 574 U.S. at 519 (citing with approval Department of Labor guidance).

Here, there is no dispute that Plaintiffs' "principal activities" are "moving boxes, stacking packages, and loading boxes." A COVID screening is neither integral nor indispensable to that work. It is not indispensable like sharpening a meat-packers knife or putting on the protective clothing for work with toxic materials. And the screening is not integral to the functioning of the warehouse generally.

COVID screenings are much more like the security screenings for theft or safety. Those screenings are concerned with aspects of society generally, i.e., the temptation to steal and possession of devices which might create sparks. The screenings enabled to the businesses to function more efficiently or safely, but they are not necessary for the business to function on any given day.

Plaintiffs argue that COVID screenings were necessary to protect the workers in the warehouse and prevent the potential infection of customers through packages. Perhaps these are legitimate reasons for Amazon to impose the screenings on its

employees. But this kind of protection for workers and customers is not necessary for the workers to do their jobs in the warehouse. Because the screenings are not necessary for the warehouse to function, the screenings are not integral or indispensable, and the FLSA does not require compensation for the time spent on COVID screenings.

Plaintiffs cite one district court case which held that the FSLA required compensation for COVID screenings at an Amazon warehouse. *See Boone v. Amazon.com Servs., LLC*, 562 F. Supp. 3d 1103 (E.D. Cal. Mar. 11, 2022). In *Boone*, the court found that the plaintiffs had plausibly alleged that "the screenings prevent the COVID-19 virus from spreading throughout defendant's fulfillment centers and infecting employees and products," and that "foregoing [the screenings] would substantially impair the workplace safety at the fulfillment centers." *Id.* at 1120-21. Even assuming the plaintiffs in *Boone* and the Plaintiffs here have plausibly alleged that COVID is a material risk to the operations of an Amazon warehouse, it is not a risk that is integral to warehouse work. COVID and other health issues are a risk of life in general that must be accounted for in all human activities. There is nothing special about COVID that makes it of particular concern for an Amazon warehouse because of the work performed there, as opposed to any other workplace where many people come into contact with each other.[1]

[1] Additionally, it appears that the court in *Boone* allowed outdated case law to influence its application of the *Busk* standard. This is an additional reason *Boone* does not persuade this Court.

Therefore, the FLSA does not require compensation for the COVID screening time Plaintiffs allege and their FLSA claim must be dismissed.

II. Illinois Minimum Wage Law ("IMWL")

"Illinois courts frequently say that they look to the Fair Labor Standards Act for guidance in interpreting the state's minimum wage law." *Mitchell v. JCG Indust., Inc.*, 745 F.3d 837, 845 (7th Cir. 2014). The Seventh Circuit has applied *Busk's* "integral and indispensable" standard to claims under the IMWL. *See Chagoya*, 992 F.3d at 615 n.21 ("Because the IMWL parallels the language of the FLSA, the parties agree that the same standard applies to the operators' claims under the FLSA and the IMWL. Accordingly, we analyze the FLSA and IMWL claims together."). Courts in this District that dismiss FLSA claims under the "integral and indispensable" standard also dismiss IMWL claims. *See Bartlett v. City of Chicago*, 2019 WL 4823532, at *4 (N.D. Ill. Oct. 1, 2019) (analyzing "FLSA and IMWL claims together" because both statutes use the federal definition of work, as modified by the Portal-to-Portal rule, to determine whether pre- or post-shift activities require wages); *Meadows v. NCR Corp.*, 2017 WL 5192009, at *4-8 (N.D. Ill. Nov. 9, 2017) (same); *Pizano v. Big Top & Party Rentals, LLC*, 2017 WL 1344526, at *1-3 & n.1 (N.D. Ill. Apr. 12, 2017) (same); *Guzman v. Laredo Sys., Inc.*, 2012 WL 5197792, at *5 (N.D. Ill. Oct. 19, 2012) (same); *Rix v. UPS*, 2007 WL 9813347, at *4 (N.D. Ill. Apr. 24, 2007) (same); *Ladegaard v. Hard Rock Concrete Cutters, Inc.*, 2004 WL 1882449, at *3-4 (N.D. Ill. Aug. 18, 2004) (same); *O'Brien v. Encotech Constr.*, 2004 WL 609798, at *4-7 (N.D. Ill. Mar. 23, 2004) (same).

Plaintiffs' only argument to the contrary is based on a dissenting opinion to the Seventh Circuit's decision in *Mitchell* applying federal FLSA standard to Illinois Minimum Wage Law claims. This Court follows the majority and dismisses Plaintiffs' Illinois Minimum Wage Law claim.

III. Illinois Wage Payment Collection Act ("IWPCA")

The IWPCA allows for a cause of action to recover "any compensation owed an employee by an employer pursuant to an employment contract or agreement." 820 ILCS 115/2. Plaintiffs allege and argue that "Amazon agreed to pay Plaintiffs an hourly rate of pay for the time they worked at Amazon's facility." R. 25 at 24. But as just discussed, Amazon disputes whether the time spent on COVID screening is "work." Plaintiffs do not allege that Amazon ever agreed that the COVID screening would constitute compensable work. Without a plausible allegation of such an agreement, Plaintiffs' IWPCA claim fails.

IV. Quantum Meruit

To state a claim for quantum meruit, Plaintiffs must allege that that they spent time on the COVID screening for Amazon's benefit and that Amazon unjustly retained this benefit. *See Bernstein & Grazian, P.C. v. Grazian & Volpe, P.C.*, 931 N.E.2d 810, 825-26 (Ill. App. Ct. 1st Dist. 2010). As discussed, the COVID screening conferred a benefit not just on Amazon, but on Plaintiffs, their co-workers, and society as a whole, because it—according to Plaintiffs' own allegations—helped mitigate a global pandemic. Further, Plaintiffs' allegation of unjust or improper conduct "rests on the same improper conduct" alleged to violate the federal and state statutes.

Because the benefit was not Amazon's alone, and because the alleged unjust conduct is premised on statutes which the Court has held do not prohibit the conduct, Plaintiffs' quantum meruit claims must fall with those claims. *See Cleary v. Philip Morris Inc.*, 656 F.3d 511, 517 (7th Cir. 2011).

Conclusion

Therefore, Amazon's motion to dismiss [21] is granted. Plaintiffs' claims are dismissed without prejudice to filing an amended complaint by 1/11/2024. If Plaintiffs fail to file an amended complaint by 1/11/2024, the dismissal with be with prejudice. If Plaintiffs decided not to file an amended complaint, they should inform the Court by email to the Courtroom Deputy as soon as possible so judgment can be entered and the case closed.

ENTERED:

Thomas M Durkin

Honorable Thomas M. Durkin
United States District Judge

Dated: December 7, 2023

IN THE UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF ILLINOIS

Lisa Johnson,

Plaintiff(s),

v.

Amazon.Com Services, LLC,

Defendant(s).

Case No. 1:23-cv-00685
Judge Thomas M. Durkin

JUDGMENT IN A CIVIL CASE

Judgment is hereby entered (check appropriate box):

☐ in favor of plaintiff(s)
and against defendant(s)
in the amount of $,

which ☐ includes pre–judgment interest.
☐ does not include pre–judgment interest.

Post-judgment interest accrues on that amount at the rate provided by law from the date of this judgment.

Plaintiff(s) shall recover costs from defendant(s).

☒ in favor of defendant(s) Amazon.Com Services, LLC
and against plaintiff(s) Lisa Johnson, Gale Miller Anderson

.

Defendant(s) shall recover costs from plaintiff(s).

☐ other:

This action was *(check one)*:

☐ tried by a jury with Judge presiding, and the jury has rendered a verdict.
☐ tried by Judge without a jury and the above decision was reached.
☒ decided by Judge Thomas M. Durkin on a motion to dismiss.

Date: 1/4/2024

Thomas G. Bruton, Clerk of Court

E. Wall, Deputy Clerk

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

LISA JOHNSON AND GALE MILLER ANDERSON, on Behalf of Themselves and on Behalf of All Others Similarly Situated,	)	
Plaintiffs,	)	**Case No.: 1:23-CV-00685**
V.	)	**Honorable Judge Thomas M. Durkin**
AMAZON.COM SERVICES, LLC,	)	
Defendant.	)	

NOTICE OF APPEAL

Plaintiffs Lisa Johnson and Gale Miller Anderson, through their attorneys, hereby give notice of their appeal to the United States Court of Appeals for the Seventh Circuit, pursuant to 28 U.S.C. § 1291, from the final judgment order entered in this action on January 4, 2024 (ECF No. 36). Plaintiffs also appeal the memorandum opinion and order entered in this action on December 7, 2023 (ECF No. 33).

Dated: January 5, 2024

Respectfully submitted,

s/ Maureen A. Salas
One of the Attorneys for Plaintiffs

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In the

United States Court of Appeals

For the Seventh Circuit

No. 24-1028

LISA JOHNSON and GALE MILLER ANDERSON,

Plaintiffs- Appellants,

v.

AMAZON.COM SERVICES LLC,

Defendant-Appellee.

Appeal from the United States District Court for the
Northern District of Illinois, Eastern Division.
No. 1:23-CV-00685 — **Thomas M. Durkin**, *Judge.*

ARGUED SEPTEMBER 25, 2024 — DECIDED JULY 8, 2025

Before SCUDDER, KIRSCH, and MALDONADO, *Circuit Judges*.

MALDONADO, *Circuit Judge*. Lisa Johnson and Gale Miller Anderson allege that Amazon violated federal and Illinois wage laws by failing to pay them and other warehouse employees for time spent in mandatory pre-shift COVID-19 screenings. The district court dismissed their Fair Labor Standards Act (FLSA) and Illinois Minimum Wage Law (IMWL) claims, finding that both claims were foreclosed by the federal Portal-to-Portal Act of 1947 (PPA), which

amended the FLSA to exclude certain pre-shift activities from compensable time.

On appeal, the employees challenge only the district court's holding that the IMWL incorporates the PPA's exclusions for compensable time. The employees contend that Illinois law affords them broader protections than federal law, and that their IMWL claims therefore should have survived dismissal.

No Illinois decision squarely addresses whether the IMWL integrates the PPA's limitations on pre-shift compensation. Rather than decide this important and unsettled question of state law in the first instance, we certify it to the Illinois Supreme Court. Certification respects federalism and ensures a definitive answer to this dispositive issue.

I. Background

Amazon owns and operates large distribution warehouses across the country where it fulfills orders made on Amazon.com. The warehouses operate 24 hours a day and employ over 20,000 workers in Illinois alone. Johnson and Miller Anderson both previously worked for Amazon in Illinois warehouses. Both held hourly, non-exempt positions that included moving, stacking, and loading packages.

After the onset of the COVID-19 pandemic in March 2020, Amazon required that all hourly, non-exempt employees undergo COVID-19 medical "screenings" prior to clocking in for their shift. Employees formed a line at the entrance to the facility and underwent a brief examination, which included temperature checks and symptom screening questions. If the employee passed the examination, they were given a mask and only then permitted to clock-in for their shift.

Johnson and Miller Anderson allege that these uncompensated pre-shift COVID-19 screenings took 10-15 minutes on average (and sometimes longer). The screenings occasionally prevented Miller Anderson from clocking in until after her scheduled start time, resulting in a further loss of wages.

Johnson and Miller Anderson sued Amazon claiming that the screening time should have been compensable because employees were required to be on the premises, the screenings were necessary to their work, and the screenings were undertaken primarily for the benefit of Amazon and its customers to keep its fulfillment centers and distribution centers operational. By sustaining a safe workplace, Amazon was able to comply with the law and continue operations during the pandemic, earning profits, and growing its business during a time that many other businesses struggled.

Amazon moved to dismiss the employees' complaint, which the district court granted in full. It held that the FLSA claims were barred by the PPA, which generally excludes from compensable time those employee activities that are "preliminary to or postliminary to" their principal work activities. 29 U.S.C. § 254(a)(2). The district court found that the COVID-19 screenings fell into the preliminary activity exclusion and were not compensable because they were not "integral and indispensable" to plaintiffs' principal activities of "moving boxes, stacking packages, and loading boxes." *Johnson v. Amazon.com Servs., LLC*, No. 1:23-CV-685, 2023 WL 8475658, at *3 (N.D. Ill. Dec. 7, 2023). While the district court recognized that the screenings enhanced worker safety and improved the business's efficiency, it ultimately concluded that they were not essential to overall operations or to employees carrying out their duties as warehouse workers.

With respect to the IMWL claims, the district court summarily concluded that they necessarily failed with the plaintiffs' FLSA claims. It noted that state and federal courts frequently look to case authority interpreting and applying the FLSA for guidance in interpreting Illinois's wage law. It further recognized that a number of district courts, and this Court on one occasion, had previously applied the PPA's exclusions to IMWL claims. *See id.* (collecting district court cases applying the PPA to IMWL overtime claims); *Chagoya v. City of Chicago*, 992 F.3d 607, 614 n.22 (7th Cir. 2021) (assuming, based on the parties' agreement, that the PPA applied to the plaintiffs' IMWL claims).

Plaintiffs timely filed this appeal, challenging the dismissal of their IMWL claims alone. We have subject matter jurisdiction over this appeal under the Class Action Fairness Act, 28 U.S.C. § 1332(d).

II. Discussion

We review de novo a district court's decision to grant a Rule 12(b)(6) motion to dismiss. *Zahn v. N. Am. Power & Gas, LLC*, 815 F.3d 1082, 1087 (7th Cir. 2016). The issue on appeal is whether the district court erred by finding that the IMWL excludes certain pre-shift work from compensation. Given the lack of state court authority, plaintiffs ask us to certify to the Illinois Supreme Court the question of whether the IMWL incorporates the limitations of the PPA. Alternatively, they ask that we reach the merits of this statutory interpretation question and affirmatively hold that the IMWL does not include the PPA's exclusions. Amazon argues that certification is unnecessary because existing federal and state authority support the district court's conclusion.

In reviewing the parties' arguments, we find that both have presented plausible arguments and that the most prudent approach is to certify the question to the Illinois Supreme Court. First, however, a bit of background on the statutory framework of the FLSA, PPA, and IMWL is helpful to set the context for the parties' debate.

A. Federal and state law standards for compensable time.

The FLSA, enacted in 1938, established broad minimum wage and overtime compensation protections for workers. The overtime provision relevant here provides that, subject to certain exceptions, "no employer shall employ any of his employees … for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed." 29 U.S.C. § 207(a)(1).[1]

The original text of the FLSA left many key terms undefined, including what constitutes a "workweek" for purposes of compensation. *See Chagoya*, 992 F.3d at 616. In the absence of statutory definitions, the Supreme Court initially interpreted compensable work broadly, defining the statutory workweek as "all time during which an employee is necessarily required to be on the employer's premises, on duty or at a prescribed workplace." *Anderson v. Mt. Clemens Pottery*

[1] Plaintiffs' IMWL claims seek unpaid overtime wages, so our discussion centers around that statutory requirement. Of course, the PPA excludes compensation for preliminary and postliminary activities whether paid at the minimum wage or overtime rate. Whether the IMWL incorporates the PPA's compensation exclusions thus likely carries implications beyond the overtime claims at issue here.

Co., 328 U.S. 680, 690–91 (1946); *see also Tenn. Coal, Iron & R.R. Co. v. Muscoda Loc. No. 123*, 321 U.S. 590, 598 (1944) (defining "work" as any "physical or mental exertion (whether burdensome or not) controlled or required by the employer and pursued necessarily and primarily for the benefit of the employer and his business").

The Supreme Court's holdings in *Anderson* and *Tennessee Coal* "provoked a flood of litigation," which prompted Congress to enact the PPA to walk back the Court's expansive definition of compensable work and limit employers' potential liability. *Chagoya*, 992 F.3d at 616 (citation omitted). Among its changes, the PPA amended the FLSA to create two categories of work-related activities for which employers were not liable:

> (a) … [N]o employer shall be subject to any liability or punishment … 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 …
>
> > (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, and
> >
> > (2) activities which are preliminary to or postliminary to said 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.

29 U.S.C. § 254(a). In short, under the PPA "ordinary commute times and preliminary and postliminary activities that occurred before or after the workday were no longer compensable activities under the FLSA." *Chagoya*, 992 F.3d at 617. Instead, the FLSA as amended applies only to an employee's "principal activities." *Id.* at 618.

As for what constitutes a principal activity, the Supreme Court has explained that principal activities include the activity or activities that an employee is employed to perform, as well as those activities which are "integral and indispensable" to the work the employee was employed to perform. *Integrity Staffing Sols., Inc. v. Busk*, 574 U.S. 27, 33 (2014). An activity is "integral and indispensable to the principal activities that an employee is employed to perform if it is an intrinsic element of those activities and one with which the employee cannot dispense if he is to perform his principal activities." *Id.* If a preliminary or postliminary activity is not integral and indispensable to an employee's principal activity, compensation is not required. *See id.* at 33–35.

Congress also specifically recognized that individual states retained the authority to enact their own broader protections. The FLSA contains a savings clause that expressly provides that nothing in the statute excuses an employer's noncompliance with state or local requirements that are more generous than the federal law. *See* 29 U.S.C. § 218(a).

Turning to Illinois law, the Illinois General Assembly enacted the IMWL in 1971 to enshrine minimum wage and overtime protections in state law. The IMWL's language parallels the FLSA in many respects, including in the overtime-wage provision, which provides that "no employer shall employ any of his employees for a workweek of more than 40 hours

unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than 1 1/2 times the regular rate at which he is employed." 820 ILCS 105/4a(1).

Like the FLSA, the IMWL does not define "workweek" for the purpose of determining what qualifies as compensable time. To fill the gap, the IMWL empowers the Director of the Illinois Department of Labor (DOL) to promulgate regulations defining key terms and concepts. 820 ILCS 105/10. Relevant here, the Illinois DOL regulation at section 210.110 defines "hours worked" as "all the time an employee is required to be on duty, or on the employer's premises, or at other prescribed places of work, and any additional time he or she is required or permitted to work for the employer." ILL. ADMIN. CODE tit. 56, § 210.110. If that language sounds familiar, it is because it parallels the Supreme Court's definition of the statutory workweek under the FLSA in *Anderson*. 328 U.S. at 690–91. Section 210.110's definition of "hours worked" goes on to describe the circumstances under which employees are entitled to compensation for meal periods, on-call time, and travel time.

Section 210.110 makes a single indirect reference to the PPA, specifically incorporating the PPA regulations governing the compensability of travel time. 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 ….").

Finally, the regulations implementing the IMWL also provide that the Director of the Illinois DOL may look to FLSA

regulations for guidance in interpreting and enforcing the IMWL. *Id.* at § 210.120.

B. Whether the IMWL incorporates the PPA's exclusions for preliminary and postliminary activities.

With this legal framework in mind, we turn next to the parties' arguments on appeal. Plaintiffs lead with their request for certification. But before reaching certification, we must first examine whether the district court correctly held that the federal standards for compensable time under the PPA applied to plaintiffs' IMWL claims. This is our necessary starting point because we should only certify a question to a state supreme court if we "find ourselves 'genuinely uncertain' about the answer to the state-law question." *Jadair Int'l, Inc. v. Am. Nat'l Prop. & Cas. Co.*, 77 F.4th 546, 557 (7th Cir. 2023) (citation omitted). We therefore first examine the parties' competing arguments on whether the IMWL excludes compensation for preliminary and postliminary activities like the PPA.

In interpreting the IMWL, we apply Illinois rules of statutory construction. *See Zahn*, 815 F.3d at 1089. Our primary objective is to "ascertain and give effect to the intent of the legislature," and "[t]he best evidence of legislative intent is the statutory language." *In re Hernandez*, 918 F.3d 563, 569 (7th Cir. 2019) (quoting *People v. Donoho*, 788 N.E.2d 707, 715 (Ill. 2003)). When assessing legislative intent, "courts should consider, in addition to the statutory language, the reason for the law, the problems to be remedied, and the objects and purposes sought." *Id*. "Statutory provisions should not be read in isolation but 'as a whole; all relevant parts of the statute must be considered when courts attempt to divine the legislative intent underlying the statute.'" *Id*. (citation omitted).

Beginning with the statutory text, plaintiffs correctly note that the PPA's compensation exclusions are absent from the state statute. Both the IMWL and FLSA include nearly identical overtime requirements—requiring time-and-a-half pay for hours worked in excess of 40 hours a week. But while the PPA amended the FLSA to exclude preliminary and postliminary activities from compensation, the IMWL contains no such exclusion. Nor does the IMWL have language comparable to the PPA establishing an employees' "principal activities" as the metric for measuring compensable time. Given that the "best evidence of legislative intent is the statutory language," the absence in the IMWL of the express statutory exclusions found in the PPA might suggest that the Illinois General Assembly did not intend to incorporate those same limitations in the IMWL. *See Donoho*, 788 N.E.2d at 715.

We can find further evidence of legislative intent by utilizing the familiar statutory canon *expressio unius est exclusio alterius*, or "the expression of one thing is the exclusion of another." *See Metzger v. DaRosa*, 805 N.E.2d 1165, 1172 (Ill. 2004) (citation omitted). The drafters of the IMWL chose to reference and incorporate other exclusions and limitations found in the FLSA into the overtime provision of the IMWL. *See, e.g.*, 820 ILCS 105/4a(2)(E) (stating that the overtime requirements do not apply to "[a]ny employee employed in a bona fide executive, administrative or professional capacity, including any radio or television announcer, news editor, or chief engineer, a*s defined by or covered by the Federal Fair Labor Standards Act*" (emphasis added)); 820 ILCS 105/4a(2)(D) (excluding "[a]ny commissioned employee as described in [the FLSA]"). That the legislature adopted some provisions of the FLSA,

and not others, supports the plaintiffs' position that the omission of the PPA's exclusions was deliberate.

To be sure, statutory silence only takes us so far. Like the FLSA, the IMWL does not define the "workweek" for the purpose of determining whether an employee is owed overtime pay in a given week. Does the ambiguity in the IMWL's undefined terms suggest it incorporates the PPA's exclusions, given the identical state and federal statutory overtime provisions? Perhaps. To answer that question, we must turn next to the regulations implementing the IMWL.

As discussed above, section 210.110 of the Illinois Administrative Code defines "hours worked" under the IMWL as "all the time an employee is required to be on duty, or on the employer's premises, or at other prescribed places of work, and any additional time he or she is required or permitted to work for the employer." ILL. ADMIN. CODE tit. 56, § 210.110. This administrative rule carries "the force and effect of law" and is entitled to deference so long as it is "not inconsistent with the statute pursuant to which [it was] adopted." *Kerbes v. Raceway Assocs., LLC*, 961 N.E.2d 865, 870 (Ill. App. Ct. 2011) (citing *Kean v. Wal–Mart Stores, Inc.*, 919 N.E.2d 926 (Ill. 2009)).

Plaintiffs argue that section 210.110's definition of "hours worked" resolves the question presented on appeal. They note that this definition mirrors the pre-PPA definition of work from the United States Supreme Court's decision in *Anderson* (the definition that Congress sought to curtail with the PPA), and they argue that Illinois's expansive definition demonstrates that compensable work under the IMWL is not subject to the limitations found in the PPA. Plaintiffs also

point out that the Illinois DOL expressly adopted and referenced other federal standards, including the PPA's travel time regulations, in other parts of section 210.10. By including an express reference to the PPA's travel time regulations but failing to reference the preliminary and postliminary activity exclusion, plaintiffs maintain that the Illinois DOL was signaling that the latter was deliberately left out.

Plaintiffs' arguments with respect to section 210.110 are well-taken, and the regulatory definition of "hours worked" seems to support their position that the IMWL does not incorporate the preliminary and postliminary activities exclusions found in the PPA. But as Amazon notes, section 210.110 is not the only relevant regulation at issue. Amazon separately points to section 210.120, the provision instructing that the Director of the DOL may look to FLSA regulations for guidance in interpreting the IMWL. Amazon also correctly observes that a number of courts, including Illinois appellate courts and this Court, have relied on this regulation to construe the IMWL consistent with federal standards. The argument goes that if the Illinois agency tasked with enforcement and implementation of the IMWL is to look to federal law for guidance, so too should the courts interpreting the statute. Amazon thus argues that this regulatory instruction to look to federal law, when read in tandem with the underlying parallel overtime provisions in each statute, supports finding that the preliminary and postliminary activities exclusion under the PPA applies to overtime claims under the IMWL.

Amazon's argument here has some traction. We have recognized that, in light of the parallel overtime provisions in the IMWL and FLSA, and the instructions in section 210.120 of the Illinois regulations, courts can look to federal standards

under the FLSA to analyze overtime claims brought under the IMWL. *See, e.g.*, *Driver v. AppleIllinois, LLC*, 739 F.3d 1073, 1075 (7th Cir. 2014) ("Illinois courts (and likewise, therefore, federal courts administering Illinois law) seek guidance in the federal case law interpreting the Fair Labor Standards Act." (citing ILL. ADMIN. CODE tit. 56, § 210.120)); *Urnikis-Negro v. Am. Fam. Prop. Servs.*, 616 F.3d 665, 672 n.3 (7th Cir. 2010) ("The overtime provision of the [IMWL] is parallel to that of the FLSA, and Illinois courts apply the same principles … to the state provision."). Illinois appellate courts have consistently recognized this same principle. *See Kerbes*, 961 N.E.2d at 870 ("[C]ourts have recognized that in light of their substantial similarities, provisions of the FLSA and interpretations of that legislation can be considered in applying the Minimum Wage Law." (citations omitted)). And in a recently issued opinion, the Illinois Supreme Court confirmed that "[t]he Department's regulations provide that federal guidance as to the meaning of the [FLSA] is probative of the meaning of the [IMWL]." *Mercado v. S&C Elec. Co.*, 2025 IL 129526, ¶ 33, 2025 WL 285291, at *7 (Ill. 2025). There is thus fairly strong support for Amazon's general proposition that we can and should look at federal law to interpret the scope and meaning of the IMWL.

Amazon is also correct that we have previously applied the preliminary and postliminary exclusion under the PPA to state law claims under the IMWL, but that proposition is not binding on us here. *See Chagoya*, 992 F.3d at 615 n.21. In *Chagoya*, the plaintiffs sought compensation under the FLSA and IMWL for time spent transporting equipment before and after their shifts. *Id.* at 614. We explained in a brief footnote that, because the parties agreed the same standards applied to both the federal and state law claims, we would analyze them

together. *Id.* at 615 n.21. Amazon argues that this footnote is an affirmative holding of this Court that the standards under the PPA apply to the IMWL. But that argument goes too far. Our decision in *Chagoya* to apply the same standards was an assumption made based on the parties' agreement, devoid of any legal analysis, and is therefore not precedential. *See Matter of Volpert*, 110 F.3d 494, 497 (7th Cir. 1997) (citing *Webster v. Fall*, 266 U.S. 507, 511 (1925)) (noting that an assumption by a prior panel did not amount to binding precedent where the prior panel did not discuss the issue). *Chagoya* thus does not, by itself, resolve the question here.

Still, setting aside the Court's non-binding assumption in *Chagoya*, there is a well-established trend of looking to federal authority and standards to interpret and apply the IMWL, especially where the language of the statutes is parallel and Illinois caselaw is silent on an issue. *See Kerbes*, 961 N.E.2d at 870; *Driver*, 739 F.3d at 1075; *Urnikis-Negro*, 616 F.3d at 672 n.3; *see also Lewis v. Giordano's Enters., Inc.*, 921 N.E.2d 740, 745 (Ill. App. Ct. 2009) ("When, as in this case, there is an absence of Illinois case law interpreting an Illinois wage statute, a court may look for guidance to federal cases interpreting an analogous federal statute, namely the Fair Labor Standards Act ….").

Of course, as plaintiffs emphasize, none of the cases cited by Amazon applying Illinois law (beyond the non-binding *Chagoya* footnote) involved the same exclusions at issue here under the PPA. And none of the cases involved a situation comparable to what Amazon asks us to do here—to import a FLSA *statutory* exclusion into the IMWL where it does not

exist and an IMWL regulation suggests the opposite.[2] Instead, those cases look to federal regulations or precedent for guidance when both the FLSA and IMWL speak in tandem (or are silent) on the relevant topic. That is not the case here: while the underlying overtime provisions in both statutes are identical, there is a relevant and express statutory exclusion from compensable time in the federal statute that is not present in the state statute. There is a difference between applying federal regulations and caselaw to interpret parallel state statutory or regulatory language (the typical situation in the caselaw) and importing federal statutory exclusions into the state statute where they are not otherwise found (and where the regulations are in tension with the statutory exclusion).

Furthermore, a general practice of looking at federal authority under the FLSA to interpret the IMWL does not require that the IMWL and FLSA be read identically in every

[2] Amazon relies on a Sixth Circuit case applying the same exclusions under the PPA to Kentucky's wage and hour statute, but the differences between the Kentucky and Illinois regulatory regimes make that case distinguishable. *See Vance v. Amazon.com*, 852 F.3d 601, 613 (6th Cir. 2017). The Sixth Circuit concluded that the PPA's preliminary/postliminary limitations were incorporated into Kentucky law, primarily because the Kentucky wage regulations expressly reference the FLSA travel time and waiting time rules under the PPA. *See id*. But unlike the Illinois regulations, the Kentucky regulations use the same "principal activity" language as the PPA in defining the circumstances under which travel time is compensable. Unlike here then, there was a direct connection between the Kentucky regulatory definition of work and the limiting language in the PPA such that it might make sense to incorporate all of the PPA's limitations into the Kentucky statute. That connection is missing here because, as noted above, the Illinois regulations define the workweek in dramatically broader terms than the PPA without referencing the "principal activity" metric.

case. Because of the FLSA's savings clause, "federal law does not preempt the state law if the latter is more generous," and an employer can run afoul of state wage law for practices that do not otherwise violate federal law. *See Mitchell v. JCG Indus., Inc.*, 745 F.3d 837, 838 (7th Cir. 2014) (citations omitted). And Illinois courts have recognized that, although federal law may be instructive authority in interpreting the FLSA, it is not necessarily controlling where the statutory language is different. *Soucek v. Breath of Life Pro. Servs., NFP*, 205 N.E.3d 788, 799 (Ill. App. Ct. 2021) ("As this court has emphasized before, Illinois minimum wage law is not identical to the FLSA." (cleaned up)). It is thus not dispositive to say that the statutory overtime provisions are parallel and that courts generally look to federal standards to interpret the IMWL. Instead, where the statutory language is different—the PPA's exclusions are not in the IMWL—federal authority is persuasive at best but not controlling.

Ultimately, we need not resolve the tension created by the statutes, regulations, and caselaw. Our goal in interpreting state law is to decide an issue as we predict the Illinois Supreme Court would decide it. *Murphy v. Smith*, 844 F.3d 653, 658 (7th Cir. 2016). But in cases where the parties have presented plausible competing arguments on an issue of tremendous significance to the state that make that prediction uncertain, we have another tool at our disposal that respects federalism: certification. In light of the parties' reasonable positions outlined above, and the other relevant considerations below, we find that certification to the Illinois Supreme Court is warranted.

C. Whether to Certify the Question.

"Federal courts may ascertain the content of state substantive law while sitting in diversity, but we sometimes certify a question of state law based on several factors." *Finite Res., Ltd. v. DTE Methane Res., LLC*, 44 F.4th 680, 685 (7th Cir. 2022). The most important factor in deciding whether to grant certification is "whether we feel genuinely uncertain about an issue of state law." *Id.* (citation omitted). Other additional considerations include whether (1) the case concerns a matter of vital public concern, (2) the issue is likely to recur in other cases, (3) the question to be certified is outcome determinative of the case, and (4) the state supreme court has yet to have an opportunity to illuminate a clear path on the issue. *Id*. (citations omitted). Consideration of these factors ensures "that federal courts will not overburden state courts with requests for certification when what is required is not the promulgation of new law but rather, the exercise of a court's judgment." *State Farm Mut. Auto. Ins. Co. v. Pate*, 275 F.3d 666, 672 (7th Cir. 2001).

Here, our consideration of the applicable factors all weigh in favor of certification. First, whether the IMWL incorporates the PPA's preliminary and postliminary activities exclusion is unresolved, and we are uncertain as to how the Illinois Supreme Court would decide the issue given the competing authorities and plausible arguments on both sides. The absence of any Illinois authority remotely on point, including any intermediate appellate authority, cautions us against guessing how the Illinois Supreme Court would resolve the question in the first instance.

The remaining factors likewise all weigh in favor of certification. The question is of vital public concern and is likely to

recur. Whether an employee's IMWL wage claim for mandatory pre-shift activities like Amazon's medical screenings fall under the PPA's exclusions, or a more expansive state law standard, is of profound significance to workers and employers in Illinois. As alleged, Amazon alone has tens of thousands of warehouse workers in Illinois, and there are likely thousands of other similarly situated employees across numerous other industries that have been required to participate in pre-shift activities on their employer's premises. It is vitally important for these workers and their employers to have clarity on the compensability of these types of pre-shift activities under the IMWL. Until the Illinois Supreme Court resolves the issue, workers will likely continue to bring suits raising the same question.

Additionally, whether the preliminary/postliminary activity exclusions under the PPA apply to the IMWL is dispositive of plaintiffs' claims. Plaintiffs conceded on appeal that their FLSA claims fail because of the PPA's preliminary activity exclusion, and they have not challenged the district court's conclusion that the screenings were not integral and indispensable to plaintiffs' principal work activities as warehouse workers. If those same standards apply to plaintiffs' IMWL claims, those state law claims necessarily fail. But if the PPA standards do not apply, then plaintiffs' claims appear subject only to the limitation provided in the Illinois DOL regulations, which define "hours worked" as "all the time an employee is required to be … on the employer's premises." ILL. ADMIN. CODE tit. 56, § 210.110. The question of whether the PPA applies is thus dispositive of whether plaintiffs' claims can survive dismissal.

Amazon's counter points on this factor are not persuasive. Amazon contends that, if the PPA does not apply, plaintiffs' time is only compensable if it was primarily for the benefit of their employer, the standard established by the pre-PPA Supreme Court case of *Tennessee Coal*. *See* 321 U.S. at 590. Amazon argues that plaintiffs have already conceded that their time spent in the medical screenings was not compensable under this standard, because they have not challenged the district court's conclusion (with respect to their FLSA claims) that the screenings were primarily for the benefit of employee safety, not the benefit of Amazon.

But absent the exclusions under the PPA, it is not apparent that plaintiffs' IMWL claims would be subject to the "primarily for the benefit of the employer" test for compensation from *Tennessee Coal*. Rather, the claims would appear subject to section 210.110 of the Illinois DOL regulations, which generally mirrors *Anderson*'s broad definition of compensable work. Of course, the Illinois Supreme Court might also prescribe a different rule or standard altogether. We need not speculate as to other approaches the Court might take, because the possibilities just further demonstrate why certification is warranted. What matters is that if the PPA applies, plaintiffs' IMWL claims fail. If it does not, they could survive under a different standard. The answer to the question is thus dispositive.

Finally, the last factor also weighs in favor of certification. The Illinois Supreme Court has not yet had an opportunity to pass on this question of great importance to workers and businesses. As the final authority on matters of Illinois statutory interpretation, the Illinois Supreme Court should decide the question. Certification is appropriate to respect cooperative

federalism and to ensure a definitive answer to this unsettled question of state law.

III. Conclusion

For the forgoing reasons, we respectfully request that the Illinois Supreme Court answer the following certified question:

> 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)?

Nothing in this opinion should be construed to limit the Illinois Supreme Court's inquiry, and we welcome the Justices reformulating the question to suit their review.

Accordingly, the question is CERTIFIED. All further proceedings in this Court are STAYED while the Illinois Supreme Court considers this matter.

SUPREME COURT OF ILLINOIS

SUPREME COURT BUILDING
200 East Capitol Avenue
SPRINGFIELD, ILLINOIS 62701-1721

CYNTHIA A. GRANT
Clerk of the Court

(217) 782-2035
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July 11, 2025

Hon. Christopher G. Conway
Clerk of the United Stated Court of Appeals
for the Seventh Circuit
219 South Dearborn Street, Room 2722
Chicago, Illinois 60604

In re: Johnson v. Amazon.com Services LLC
132016

Dear Mr. Conway:

Enclosed is a certified order entered July 11, 2025, by the Illinois Supreme Court in the above-captioned cause.

Very truly yours,

Cynthia A. Grant

Clerk of the Supreme Court

cc: Douglas Michael Werman
Maureen Ann Salas
Sari Makram Alamuddin

State of Illinois
Supreme Court

I, Cynthia A. Grant, Clerk of the Supreme Court of the State of Illinois, and keeper of the records, files and Seal thereof do hereby certify the following to be a true copy of an order entered July 11, 2025, in a certain cause entitled:

132016	)	
	)	
	)	
	)	
Lisa Johnson and Gale Miller Anderson,	)	
	)	
Plaintiffs-Appellants	)	Certif. 7th Cir.
	)	
v.	)	Federal Court, Seventh Circuit
	)	1:23-CV-00685, 24-1028
Amazon.com Services LLC,	)	
	)	
Defendant-Appellee	)	
	)	
	)	

Filed in this office on the 9th day of July A.D. 2025.

SEAL OF THE SUPREME COURT
STATE OF ILLINOIS
AUG. 26, 1818

IN TESTIMONY WHEREOF, I have set my hand and affixed the seal of said Supreme Court, in Springfield, in said State, this 11th day of July, 2025.

Cynthia A. Grant

Clerk,
Supreme Court of the State of Illinois

132016

IN THE

SUPREME COURT OF ILLINOIS

Lisa Johnson and Gale Miller Anderson, Plaintiffs-Appellants v. Amazon.com Services LLC, Defendant-Appellee	)	Certif. 7th Cir. Federal Court, Seventh Circuit 1:23-CV-00685, 24-1028

O R D E R

Pursuant to Supreme Court Rule 20, this Court will answer the question of law certified to this Court by the United States Court of Appeals for the Seventh Circuit in Lisa Johnson and Gale Miller Anderson v. Amazon.com Services LLC, No. 24-1028. The brief of the appellant is due August 15, 2025. Remaining briefs shall be filed according to Supreme Court Rule 343.

Order Entered by the Court.

FILED
July 11, 2025
SUPREME COURT
CLERK

EMPLOYMENT (820 ILCS 105/) Minimum Wage Law.

(820 ILCS 105/1) (from Ch. 48, par. 1001)
Sec. 1. This Act is known and may be cited as the "Minimum Wage Law".
(Source: P.A. 77-1451.)

(820 ILCS 105/2) (from Ch. 48, par. 1002)
Sec. 2. The General Assembly finds that the existence in industries, trades or business, or branches thereof, including offices, mercantile establishments and all other places of employment in the State of Illinois covered by this Act, of conditions detrimental to the maintenance of the minimum standard of living necessary for the health, efficiency and general well-being of workers, leads to labor disputes, and places burdens on the State, and all other subordinate political bodies thereof, to assist and supply necessary moneys and goods to workers and their families to aid them to exist on a minimum budget for their needs, and thus places an unnecessary burden on the taxpayers of this State. Therefore, it is the policy of this Act to establish a minimum wage standard for workers at a level consistent with their health, efficiency and general well-being; to safeguard such minimum wage against the unfair competition of wage and hour standards which do not provide such adequate standards of living; and to sustain purchasing power and increase employment opportunities.

It is against public policy for an employer to pay to his employees an amount less than that fixed by this Act. Payment of any amount less than herein fixed is an unreasonable and oppressive wage, and less than sufficient to meet the minimum cost of living necessary for health. Any contract, agreement or understanding for or in relation to such unreasonable and oppressive wage for any employment covered by this Act is void.
(Source: P.A. 77-1451.)

(820 ILCS 105/2.1) (from Ch. 48, par. 1002.1)
Sec. 2.1. Participation by an employee in any kind of ridesharing arrangement shall not result in the application of this Act to the period of time necessary to effectively use such an arrangement.
(Source: P.A. 83-402.)

(b) "Wages" means compensation due to an employee by reason of his employment, including allowances determined by the Director in accordance with the provisions of this Act for gratuities and, when furnished by the employer, for meals and lodging actually used by the employee.

(c) "Employer" includes any individual, partnership, association, corporation, limited liability company, business trust, governmental or quasi-governmental body, or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee, for which one or more persons are gainfully employed on some day within a calendar year. An employer is subject to this Act in a calendar year on and after the first day in such calendar year in which he employs one or more persons, and for the following calendar year.

(d) "Employee" includes any individual permitted to work by an employer in an occupation, and includes, notwithstanding subdivision (1) of this subsection (d), one or more domestic workers as defined in Section 10 of the Domestic Workers' Bill of Rights Act, but does not include any individual permitted to work:

(1) For an employer employing fewer than 4 employees exclusive of the employer's parent, spouse or child or other members of his immediate family.

(2) As an employee employed in agriculture or aquaculture (A) if such employee is employed by an employer who did not, during any calendar quarter during the preceding calendar year, use more than 500 man-days of agricultural or aquacultural labor, (B) if such employee is the parent, spouse or child, or other member of the employer's immediate family, (C) if such employee (i) is employed as a hand harvest laborer and is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment, (ii) commutes daily from his permanent residence to the farm on which he is so employed, and (iii) has been employed in agriculture less than 13 weeks during the preceding calendar year, (D) if such employee (other than an employee described in clause (C) of this subparagraph): (i) is 16 years of age or under and is employed as a hand harvest laborer, is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment, (ii) is employed on the same farm as his parent or person standing in the place of his parent, and (iii) is paid at the same piece rate as employees over 16 are paid on the same farm.

(3) (Blank).

(4) As an outside salesman.

(5) As a member of a religious corporation or organization.

(6) At an accredited Illinois college or university employed by the college or university at which he is a student who is covered under the provisions of the Fair Labor Standards Act of 1938, as heretofore or hereafter amended.

(7) For a motor carrier and with respect to whom the U.S. Secretary of Transportation has the power to establish qualifications and maximum hours of service under the provisions of Title 49 U.S.C. or the State of Illinois under Section 18b-105 (Title 92 of the Illinois Administrative Code, Part 395 - Hours of Service of Drivers) of the Illinois Vehicle Code.

(8) As an employee employed as a player who is 28 years old or younger, a manager, a coach, or an athletic trainer by a minor league professional baseball team not affiliated with a major league baseball club, if (A) the minor league professional baseball team does not operate for more than 7 months in any calendar year or (B) during the preceding calendar year, the minor league professional baseball team's average receipts for any 6-month period of the year were not more than 33 1/3% of its average receipts for the other 6 months of the year.

The above exclusions from the term "employee" may be further defined by regulations of the Director.

(e) "Occupation" means an industry, trade, business or class of work in which employees are gainfully employed.

(f) "Gratuities" means voluntary monetary contributions to an employee from a guest, patron or customer in connection with services rendered.

(g) "Outside salesman" means an employee regularly engaged in making sales or obtaining orders or contracts for services where a major portion of such duties are performed away from his employer's place of business.

(h) "Day camp" means a seasonal recreation program in operation for no more than 16 weeks intermittently throughout the calendar year, accommodating for profit or under philanthropic or charitable auspices, 5 or more children under 18 years of age, not including overnight programs. The term "day camp" does not include a "day care agency", "child care facility" or "foster family home" as licensed by the Illinois Department of Children and Family Services.

(Source: P.A. 99-758, eff. 1-1-17; 100-192, eff. 8-18-17.)

Sections 5 and 6 of this Act, and on and after January 1, 1984, every employer shall pay to each of his employees in every occupation wages of not less than $2.65 per hour or in the case of employees under 18 years of age wages of not less than $2.25 per hour, and on and after October 1, 1984 every employer shall pay to each of his employees in every occupation wages of not less than $3.00 per hour or in the case of employees under 18 years of age wages of not less than $2.55 per hour, and on or after July 1, 1985 every employer shall pay to each of his employees in every occupation wages of not less than $3.35 per hour or in the case of employees under 18 years of age wages of not less than $2.85 per hour, and from January 1, 2004 through December 31, 2004 every employer shall pay to each of his or her employees who is 18 years of age or older in every occupation wages of not less than $5.50 per hour, and from January 1, 2005 through June 30, 2007 every employer shall pay to each of his or her employees who is 18 years of age or older in every occupation wages of not less than $6.50 per hour, and from July 1, 2007 through June 30, 2008 every employer shall pay to each of his or her employees who is 18 years of age or older in every occupation wages of not less than $7.50 per hour, and from July 1, 2008 through June 30, 2009 every employer shall pay to each of his or her employees who is 18 years of age or older in every occupation wages of not less than $7.75 per hour, and from July 1, 2009 through June 30, 2010 every employer shall pay to each of his or her employees who is 18 years of age or older in every occupation wages of not less than $8.00 per hour, and from July 1, 2010 through December 31, 2019 every employer shall pay to each of his or her employees who is 18 years of age or older in every occupation wages of not less than $8.25 per hour, and from January 1, 2020 through June 30, 2020, every employer shall pay to each of his or her employees who is 18 years of age or older in every occupation wages of not less than $9.25 per hour, and from July 1, 2020 through December 31, 2020 every employer shall pay to each of his or her employees who is 18 years of age or older in every occupation wages of not less than $10 per hour, and from January 1, 2021 through December 31, 2021 every employer shall pay to each of his or her employees who is 18 years of age or older in every occupation wages of not less than $11 per hour, and from January 1, 2022 through December 31, 2022 every employer shall pay to each of his or her employees who is 18 years of age or older in every occupation wages of not less than $12 per hour, and from January 1, 2023 through December 31, 2023 every employer shall pay to each of his or her employees who is 18 years of age or older in every occupation wages of not less than $13 per hour, and from January 1, 2024 through December 31, 2024, every employer shall pay to each of his or her employees who is 18 years of age or older in every occupation wages of not less than $14 per hour; and on and after January 1, 2025, every employer shall pay to each of his or her employees who is 18 years of age or older in every occupation wages of not less than $15 per hour.

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

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

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

(3) At no time on or before December 31, 2019 shall the wages paid to any employee under 18 years of age be more than 50¢ less than the wage required to be paid to employees who are at least 18 years of age under item (1) of this subsection (a). Beginning on January 1, 2020, every employer shall pay to each of his or her employees who is under 18 years of age that has worked more than 650 hours for the employer during any calendar year a wage not less than the wage required for employees who are 18 years of age or older under paragraph (1) of subsection (a) of Section 4 of this Act. Every employer shall pay to each of his or her employees who is under 18 years of age that has not worked more than 650 hours for the employer during any calendar year: (1) $8 per hour from January 1, 2020 through December 31, 2020; (2) $8.50 per hour from January 1, 2021 through December 31, 2021; (3) $9.25 per hour from January 1, 2022 through December 31, 2022; (4) $10.50 per hour from January 1, 2023 through December 31, 2023; (5) $12 per hour from January 1, 2024 through December 31, 2024; and (6) $13 per hour on and after January 1, 2025.

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

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

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

(e) A camp counselor employed at a day camp is not subject to the adult minimum wage if the camp counselor is paid a stipend on a onetime or periodic basis and, if the camp counselor is a minor, the minor's parent, guardian or other custodian has consented in writing to the terms of payment before the commencement of such employment.
(Source: P.A. 101-1, eff. 2-19-19.)

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

Sec. 4a. (1) Except as otherwise provided in this Section, no employer shall employ any of his employees for a workweek of more than 40 hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than 1 1/2 times the regular rate at which he is employed.

(2) The provisions of subsection (1) of this Section are not applicable to:

A. Any salesman or mechanic primarily engaged in selling or servicing automobiles, trucks or farm implements, if he is employed by a nonmanufacturing establishment primarily engaged in the business of selling such vehicles or implements to ultimate purchasers.

to such agricultural employment.

D. Any employee of a governmental body excluded from the definition of "employee" under paragraph (e)(2)(C) of Section 3 of the Federal Fair Labor Standards Act of 1938.

E. Any employee employed in a bona fide executive, administrative or professional capacity, including any radio or television announcer, news editor, or chief engineer, as defined by or covered by the Federal Fair Labor Standards Act of 1938 and the rules adopted under that Act, as both exist on March 30, 2003, but compensated at the amount of salary specified in subsections (a) and (b) of Section 541.600 of Title 29 of the Code of Federal Regulations as proposed in the Federal Register on March 31, 2003 or a greater amount of salary as may be adopted by the United States Department of Labor. For bona fide executive, administrative, and professional employees of not-for-profit corporations, the Director may, by regulation, adopt a weekly wage rate standard lower than that provided for executive, administrative, and professional employees covered under the Fair Labor Standards Act of 1938, as now or hereafter amended.

F. Any commissioned employee as described in paragraph (i) of Section 7 of the Federal Fair Labor Standards Act of 1938 and rules and regulations promulgated thereunder, as now or hereafter amended.

G. Any employment of an employee in the stead of another employee of the same employer pursuant to a worktime exchange agreement between employees.

H. Any employee of a not-for-profit educational or residential child care institution who (a) on a daily basis is directly involved in educating or caring for children who (1) are orphans, foster children, abused, neglected or abandoned children, or are otherwise homeless children and (2) reside in residential facilities of the institution and (b) is compensated at an annual rate of not less than $13,000 or, if the employee resides in such facilities and receives without cost board and lodging from such institution, not less than $10,000.

I. Any employee employed as a crew member of any uninspected towing vessel, as defined by Section 2101(40) of Title 46 of the United States Code, operating in any navigable waters in or along the boundaries of the State of Illinois.

J. Any employee who is a member of a bargaining unit recognized by the Illinois Labor Relations Board and whose union has contractually agreed to an alternate shift schedule as allowed by subsection (b) of Section 7 of the Fair Labor Standards Act of 1938.

(3) Any employer may employ any employee for a period or periods of not more than 10 hours in the aggregate in any workweek in excess of the maximum hours specified in subsection (1) of this Section without paying the compensation for overtime employment prescribed in subsection (1) if during that period or periods the employee is receiving remedial education that:

(a) is provided to employees who lack a high school diploma or educational attainment at the eighth grade level;

(b) is designed to provide reading and other basic skills at an eighth grade level or below; and

(c) does not include job specific training.

(4) A governmental body is not in violation of subsection (1) if the governmental body provides compensatory time pursuant to paragraph (o) of Section 7 of the Federal Fair Labor Standards Act of 1938, as now or hereafter amended, or is engaged in fire protection or law enforcement activities and meets the requirements of paragraph (k) of Section 7 or paragraph (b)(20) of Section 13 of the Federal Fair Labor Standards Act of 1938, as now or hereafter amended.
(Source: P.A. 99-17, eff. 1-1-16.)

(820 ILCS 105/5)
Sec. 5. (Repealed).
(Source: P.A. 77-1451. Repealed by P.A. 103-1060, eff. 1-21-25.)

(820 ILCS 105/6) (from Ch. 48, par. 1006)
Sec. 6. (a) For any occupation, the Director may provide by regulation for the employment in that occupation of learners at such wages lower than the minimum wage provided in items (1) and (3) of subsection (a) of Section 4 as the Director may find appropriate to prevent curtailment of opportunities for employment and to safeguard the minimum wage rate of this Act.

(b) Where the Director has provided by regulation for the employment of learners, such regulations are subject to provisions hereinafter set forth and to such additional terms and conditions as may be established in supplemental regulations applicable to the employment of learners in particular industries.

(c) In any occupation, every employer may pay a subminimum wage to learners during their period of learning. However, under no circumstances, may an employer pay a learner a wage less than 70% of the minimum wage rate provided in item (1) of subsection (a) of Section 4 of this Act for employees 18 years of age or older.

(d) No person is deemed a learner in any occupation for which he has completed the required training; and in no case may a person be deemed a learner in that occupation after 6 months of such training, except where the Director finds, after investigation, that for the particular occupation a minimum of proficiency cannot be acquired in 6 months.
(Source: P.A. 94-1072, eff. 7-1-07.)

(820 ILCS 105/7) (from Ch. 48, par. 1007)
Sec. 7. The Director or his authorized representatives have the authority to:

(a) Investigate and gather data regarding the wages, hours and other conditions and practices of employment in any industry subject to this Act, and may enter and inspect such places and such records (and make such transcriptions thereof) at reasonable times during regular business hours, not including lunch time at a restaurant, question such employees, and investigate such facts, conditions, practices or matters as he may deem necessary or appropriate to determine whether any person has violated any provision of this Act, or which may aid in the enforcement of this Act.

(b) Require from any employer full and correct statements and reports in writing, including sworn statements, at such times as the Director may deem necessary, of the wages, hours, names, addresses, and other information pertaining to his employees as he may deem necessary for the enforcement of this Act.

(c) Require by subpoena the attendance and testimony

application of the Director or his or her authorized representative, compel obedience by proceedings for contempt.

(d) Make random audits of employers in any industry subject to this Act to determine compliance with this Act.

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

(820 ILCS 105/8) (from Ch. 48, par. 1008)

Sec. 8. Every employer subject to any provision of this Act or of any order issued under this Act shall make and keep for a period of not less than 3 years, true and accurate records of the name, address and occupation of each of his employees, the rate of pay, and the amount paid each pay period to each employee, the hours worked each day in each work week by each employee, and such other information and make such reports therefrom to the Director as the Director may by regulation prescribe as necessary or appropriate for the enforcement of the provisions of this Act or of the regulations thereunder. Such records shall be open for inspection or transcription by the Director or his authorized representative at any reasonable time as limited by paragraph (a) of Section 7 of this Act. Every employer shall furnish to the Director or his authorized representative on demand a sworn statement of such records and information upon forms prescribed or approved by the Director. Each worker employed at the learner rate must be designated as such on the payroll record kept by the employer, with the learner's occupation shown.

(Source: P.A. 77-1451.)

(820 ILCS 105/9) (from Ch. 48, par. 1009)

Sec. 9. Every employer subject to any provision of this Act or of any regulations issued under this Act shall keep a summary of this Act approved by the Director, and copies of any applicable regulations issued under this Act or a summary of such regulations, posted in a conspicuous and accessible place in or about the premises wherever any person subject to this Act is employed. Every employer subject to any provision of this Act or any regulations issued under this Act with employees who do not regularly report to a physical workplace, such as employees who work remotely or travel for work, shall also provide the summaries and regulations by email to its employees or conspicuous posting on the employer's website or intranet site, if such site is regularly used by the employer to communicate work-related information to employees and is able to be regularly accessed by all employees, freely and without interference. Employers shall be furnished copies of such summaries and regulations by the State on request without charge.

(Source: P.A. 103-201, eff. 1-1-24.)

(820 ILCS 105/10) (from Ch. 48, par. 1010)

Sec. 10. (a) The Director shall make and revise administrative regulations, including definitions of terms, as the Director deems appropriate to carry out the purposes of this Act, to prevent the circumvention or evasion thereof, and to safeguard the minimum wage established by the Act.

(b) In order to prevent curtailment of opportunities for employment, avoid undue hardship, and safeguard the minimum wage rate under this Act, the Director may also issue regulations providing for the employment of workers with disabilities and learners at wages lower than the wage rate applicable under this Act, under permits and for such periods of time as specified therein; and providing for the employment of learners at wages lower than the wage rate applicable under this Act as follows:

(1) The Director may issue regulations for the employment of workers with disabilities at wages lower than the wage rate applicable under this Act, under permits and for such periods of time as specified therein. Such regulation shall not permit lower wages for persons with disabilities on any basis that is unrelated to such person's ability resulting from his disability, and such regulation may be issued only after notice and opportunity for public hearing as provided in subsection (c) of this Section. All certificates issued for the employment of workers with disabilities in accordance with this Section in effect on December 31, 2029, shall expire on that date, and the Director may not issue any such certificates after that date.

(2) The Director may issue regulations for the employment of learners at wages lower than the wage rate applicable under this Act. Regulations governing employment of learners may be issued only after notice and opportunity for public hearing, as provided in subsection (c) of this Section.

(c) Prior to the adoption, amendment or repeal of any rule or regulation by the Director under this Act, except regulations which concern only the internal management of the Department of Labor and do not affect any public right provided by this Act, the Director shall give proper notice to persons in any industry or occupation that may be affected by the proposed rule or regulation, and hold a public hearing on the proposed action at which any such affected person, or the person's duly authorized representative, may attend and testify or present other evidence for or against such proposed rule or regulation. Rules and regulations adopted under this Section shall be filed with the Secretary of State in compliance with the Illinois Administrative Procedure Act.

(d) The commencement of proceedings by any person aggrieved by an administrative regulation issued under this Act does not, unless specifically ordered by the Court, operate as a stay of that administrative regulation against other persons. The Court shall not grant any stay of an administrative regulation unless the person complaining of such regulation files in the Court an undertaking with a surety or sureties satisfactory to the Court for the payment to the employees affected by the regulation, in the event such regulation is affirmed, of the amount by which the compensation such employees are entitled to receive under the regulation exceeds the compensation they actually receive while such stay is in effect.

(e) The Department may adopt emergency rules in accordance with Section 5-45 of the Illinois Administrative Procedure Act to implement the changes made by this amendatory Act of the 101st General Assembly.

(Source: P.A. 103-363, eff. 7-28-23; 103-1060, eff. 1-21-25.)

(820 ILCS 105/11) (from Ch. 48, par. 1011)

Sec. 11. (a) Any employer or his agent, or the officer or agent of any private employer who:

(1) hinders or delays the Director or his authorized representative in the performance of his duties in the enforcement of this Act; or

(2) refuses to admit the Director or his authorized representative to any place of employment; or

(3) fails to keep the records required under this Act or to furnish such records required or any information to be furnished under this Act to the Director or his authorized representative upon request; or

(4) fails to make and preserve any records as required hereunder; or

records or any other information required for the proper enforcement of this Act; or

(8) fails to post a summary of this Act or a copy of any applicable regulation as required by Section 9 of this Act;

shall be guilty of a Class B misdemeanor; and each day of such failure to keep the records required under this Act or to furnish such records or information to the Director or his authorized representative or to fail to post information as required herein constitutes a separate offense. Any such employer who fails to keep payroll records as required by this Act shall be liable to the Department for a penalty of $100 per impacted employee, payable to the Department's Wage Theft Enforcement Fund.

(b) Any employer or his agent, or the officer or agent of any private employer, who pays or agrees to pay to any employee wages at a rate less than the rate applicable under this Act or of any regulation issued under this Act is guilty of a Class B misdemeanor, and each week on any day of which such employee is paid less than the wage rate applicable under this Act constitutes a separate offense.

(c) Any employer or his agent, or the officer or agent of any private employer, who discharges or in any other manner discriminates against any employee because that employee has made a complaint to his employer, or to the Director or his authorized representative, that he has not been paid wages in accordance with the provisions of this Act, or because that employee has caused to be instituted or is about to cause 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 of a Class B misdemeanor.

(d) It is the duty of the Department of Labor to inquire diligently for any violations of this Act, and to institute the action for penalties herein provided, and to enforce generally the provisions of this Act.

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

(820 ILCS 105/12)

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 payable to or deposited into 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.

(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. 103-182, eff. 6-30-23; 103-201, eff. 1-1-24; 103-605, eff. 7-1-24.)

than those applicable to such employees under this Act or the regulations issued hereunder, are not amended, rescinded, or otherwise affected by this Act but continue in full force and effect and may be enforced as provided by law unless and until they are specifically superseded by standards more favorable to such employees by operation of or in accordance with regulations issued under this Act.
(Source: P.A. 77-1451.)

(820 ILCS 105/14) (from Ch. 48, par. 1014)
Sec. 14. Nothing in this Act is deemed to interfere with, impede, or in any way diminish the right of employees to bargain collectively with their employers through representatives of their own choosing in order to establish wages or other conditions of work in excess of the applicable minimum standards of the provisions of this Act.
(Source: P.A. 77-1451.)

(820 ILCS 105/15) (from Ch. 48, par. 1015)
Sec. 15. If any provision of this Act or the application thereof to any person, employer, occupation or circumstance is held invalid, the remainder of this Act and the application of such provision to other persons, employers, occupations, or circumstances are not affected thereby.
(Source: P.A. 77-1451.)