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DEPARTMENT OF LABOR

NOTICE OF ADOPTED AMENDMENTS

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AUTHORITY: Implementing and authorized by the Minimum Wage Law [820 ILCS 105].

SOURCE: Adopted at 19 Ill. Reg. 6576, effective May 2, 1995; amended at 20 Ill. Reg. 15312, effective November 15, 1996; amended at 25 Ill. Reg. 869, effective January 1, 2001; amended at 29 Ill. Reg. 4734, effective March 21, 2005; amended at 46 Ill. Reg. 2144, effective January 21, 2022; amended at 46 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

SUBPART A: GENERAL PROVISIONS

**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

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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.

~~"Any individual permitted to work in domestic service in or about a private home", as used in Section 3(d)(3) of the Act, means a person whose primary duty is to perform non-commercial labor ordinarily carried out by a family member (in or about his/her immediate family's private home) without wages, including but not limited to: housekeeping, cooking, laundry, baby sitting, gardening, dog walking, running errands, chauffeuring of automobiles for family use, or butler, valet, maid, governess or night watch services. The phrase shall not include a person whose primary duty is to be a companion for individual(s) who are aged or infirm or a worker whose primary duty is to perform health care services in or about a private home.~~

"Aquaculture" means the controlled propagation, growth and harvest of aquatic organisms, including but not limited to fish, ~~shellfish~~ 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~~ ~~he or she~~ 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.

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"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 which 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.

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"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 he or she~~ 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 his/her~~ 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 his/her~~ 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 his/her~~ 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 ~~member of his~~ 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

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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~~~~mental retardation~~, 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~~~~work-study~~ programs.

"Tipped employee" means an employee engaged in an occupation in which

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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 ~~he or she~~ 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~~his/her employment including allowances determined by the Director in accordance with the provisions of this Act. These allowances ~~shall~~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 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. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 210.125 Domestic Workers**

a) Definitions. The following definitions shall apply for Section 125 only:

- 1) "Bona fide meal break" means a period in which a domestic worker is completely relieved from duty for the purposes of eating regular meals. Ordinarily 20 minutes or more is long enough for a bona fide meal break. A domestic worker is not completely relieved from duty if the domestic worker is required to perform any duties, whether active or inactive, while eating.
- 2) "Rest Period" means a period of time in which a domestic worker has complete freedom from all work-related duties and during which a domestic worker may either leave the location where the domestic work is performed without an obligation to be on call or remain at the location the

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domestic work is being performed for purely personal pursuits. Rest periods of less than 20 minutes must be counted as "hours worked"

3) "Shared Services" means services provided by a domestic worker to more than one employer that are intentionally coordinated by the employers. For example, in the context of childcare services, shared services are commonly referred to as a "nanny share".

4) "Sleep Period" means a regularly scheduled, uninterrupted sleeping time of not more than eight hours, during which the employer provides sleeping quarters that comply with 56 Ill. Adm. Code 210.125(d)(1)(B) and a domestic worker can sleep, uninterrupted by work-related duties. Any period of interrupted sleep to perform work-related duties must be compensated. If a domestic worker cannot get at least 5 hours of uninterrupted sleep, completely relieved of work-related duties, that time period shall not be considered a sleep period and must be compensated as working time.

b) Hours Worked. A domestic worker must be paid for all hours worked, excluding bona fide meal breaks, rest periods, and sleep periods.

1) Example: A caregiver making a personal call while watching over a client who is bedridden and requires constant supervision is not completely relieved of all work-related duties and must be compensated for this time.

2) Example: A nanny who is taking her lunch break, is able to leave the employer's premises at her discretion, and is relieved of her duties of childcare by a parent, is completely relieved of all work-related duties.

3) Example: a caregiver lives at his employer's home. As his sleep period, the caregiver is relieved of his duties at 9 pm and is to resume work at 5 am the following day. However, during one particular sleep period, he is interrupted 3 times between 11 pm and 4 am. Here, the caregiver is not allowed a period of at least 5 hours of uninterrupted sleep, the 5-hour period of 11 pm to 4 am is not considered a sleep period, and the time is compensable as working time.

c) Recordkeeping. An employer shall maintain pay and time records for domestic workers in accordance with Section 210.700.

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- 1) Time records shall include records indicating each bona fide meal break, rest period, and sleep period taken in a workweek.
  - 2) In the absence of accurate employer time records, a domestic worker need only produce sufficient evidence to demonstrate the amount and extent of compensable time worked as a just and reasonable inference. Credible testimony by the employee is sufficient evidence. The employer must then produce evidence of the exact amount of work or time earned or produce evidence to negate the reasonable inferences drawn from the employee's evidence. The employer's failure to make and maintain records as required under subsection (b)(1) shall not preclude a finding based on the information available that compensable time is due, even though the award may be only approximate.
- d) Overtime. A domestic worker must be compensated at the overtime rate for all hours worked in excess of 40 in a workweek, regardless of the nature of the services provided. Overtime base rates must be calculated by including all credits taken by the employer for lodging and meals in a workweek as well as any deductions taken by the employer. Where two or more employers share services, the hours worked by the domestic worker for each employer must be included in calculating total hours worked in the workweek for overtime purposes.
- 1) Example: A worker is hired jointly by two families with an agreement to provide nanny services for two separate households. The worker provides services for a combined 50 hours during the week: 30 hours for Family A and 20 Hours for family B. The worker is entitled to 10 hours of pay at overtime rates for time worked over 40 hours.
  - 2) Example: A cashier at a family-owned restaurant is asked by the restaurant owner to take care of the owner's children a couple of days a week. The worker works a combined 60 hours during the week: 40 hours as a cashier at the restaurant and 20 hours taking care of the owner's children. The worker is entitled to 20 hours of pay at overtime rates.
- e) Lodging or Meal Credit
- 1) An employer may take a credit from a domestic worker's wages for meals or lodging actually provided to the domestic worker, if the following conditions are met:

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- A) the domestic worker voluntarily and freely chooses the lodging or meals;
  - B) the lodging is private, safe, and sanitary and otherwise complies with federal, State and local laws, ordinances or prohibitions including but not limited to:
    - i) a room with a door with a lock;
    - ii) at least a twin-sized bed, or larger, and other basic accommodations; and
    - iii) unrestricted access to the kitchen, laundry, bathroom and potable water.
  - C) the employer maintains accurate records on a workweek basis of any lodging and meal credit taken for that workweek, including records demonstrating:
    - i) the costs incurred including itemized accounts of the nature and amounts of the expenditures; and
    - ii) any deductions from wages, including overtime wages;
  - D) the resulting credit for lodging is the lesser of the fair market value of the accommodations provided or seven and one-half times the statutory minimum hourly wage for each week lodging is furnished (minimum wage X 7.5); and
  - E) the employer takes a credit based on the reasonable cost of the meals and the resulting credit for meals is the lesser of \$2 for breakfast, \$3 for lunch, and \$3 for dinner or the actual cost.
- 2) An employer shall not take lodging or meal credits from the wages of a domestic worker if the employer requires that a domestic worker reside on the employer's premises or in a particular location or if the domestic worker maintains a separate place of residence and sleeps at the employers' premises for the benefit of the employer and for purposes of performing job duties.

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(Source: Added at 46 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

SUBPART G: RECORDS, POSTING AND NOTICE REQUIREMENTS

**Section 210.750 Posting Requirements**

Every employer employing "employees" as defined by this Act shall post and keep posted, in conspicuous places on the premises of the employer where notices to employees are customarily posted, a notice, to be prepared or approved by the Director in various languages, summarizing the requirements of the Act and information pertaining to the filing of a complaint.

(Source: Added at 46 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

SUBPART J: ASSESSMENT OF PENALTIES AND PUNITIVE DAMAGES

**Section 210.1010 Employer Conduct Deemed ~~Willful~~ ~~Willful~~**

An employer's conduct shall be deemed ~~willful~~ ~~willful~~ when the employer knew its underpayment of wages was prohibited by the Act or showed reckless disregard of the wage payment requirements under the Act. All of the facts and circumstances surrounding the violations shall be taken into account in determining whether, by a preponderance of the evidence, an employer's conduct was ~~willful~~ ~~willful~~.

- a) An employer's conduct shall be deemed knowing, among other situations, if the employer received advice from a responsible, duly authorized representative of the Director to the effect that the conduct in question is not lawful; if the employer has previously received notice, through a responsible, duly authorized representative of the Director, that the employer allegedly was in violation of the Act; if a court or other tribunal has made a finding that the employer has previously violated the Act for underpaying its employees.
- b) An employer's conduct shall be deemed reckless, among other situations, if, as a result of previous advice of the Director, the employer was on notice that it should have inquired further into whether its conduct was in compliance with the Act and failed to make adequate further inquiries.

(Source: Amended at 46 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)