

## ILLINOIS DEPARTMENT OF LABOR

## NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Minimum Wage Law
- 2) Code Citation: 56 Ill. Adm. Code 210
- 3) 

<u>Section Numbers:</u>	<u>Proposed Actions:</u>
210.110	Amendment
210.125	New Section
210.1010	Amendment
- 4) Statutory Authority: 820 ILCS 105
- 5) Complete Description of the Subjects and Issues Involved: This Part is being amended to define domestic worker, rest period, shared services, bona-fide meal break and sleep period. It will clarify the definition of "hours worked". Requires employers to keep time and pay records for domestic workers they employ. Clarifies the circumstances in which an employer may take a credit for meals and lodging provided to a domestic worker while employed.
- 6) Published studies and reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace an emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other rulemakings pending on this part? Yes

<u>Section Number:</u>	<u>Proposed Action:</u>	<u>Illinois Register Citation:</u>
210.115	New Section	45 Ill. Reg. 6894, June 11, 2021
- 11) Statement of Statewide Policy Objectives: This rulemaking does not create or enlarge a mandate as described in Section 3(b) of the State Mandates Act.
- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Comments on this proposed rulemaking may be submitted in writing for a period of 45 days following publication of this Notice. Comments should be submitted to:

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- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not-for-profit corporations affected: Businesses impacted by this rule would be those that employ people that perform house cleaning, home management, nanny services, personal care giving, laundering, cooking, companion services, chauffeuring or other household services.
  - B) Reporting, bookkeeping or other procedures required for compliance: The new rule will require employers who employ domestic workers to maintain pay and time records.
  - C) Types of professional skills necessary for compliance: Maintaining pay and time records for employees.
- 14) Small Business Impact Analysis:
- A) Types of businesses subject to the proposed rule:
    - 81 Other Services
  - B) Categories that the Agency reasonably believes the rulemaking will impact including:
    - i. hiring and additional staffing
    - viii. recordkeeping
    - ix. compensation and benefits
- 15) Regulatory Agenda on which this rulemaking was summarized: July 2021

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The full text of the proposed amendments begins on the next page:

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

PART 210  
MINIMUM WAGE LAW

SUBPART A: GENERAL PROVISIONS

- Section
- 210.100 Application of the Act
- 210.110 Definitions
- 210.120 The Use of Federal Definitions of Various Terms
- [210.125 Domestic Workers](#)
- 210.130 Length of Coverage for an Employer
- 210.140 Uniforms
- 210.150 Forbidden Activity Covered by Other Laws
- 210.160 Communication with the Department and the Director

SUBPART B: ESTABLISHMENT OF MINIMUM  
WAGE ALLOWANCE FOR GRATUITIES

- Section
- 210.200 Meals and Lodging

SUBPART C: SEX DISCRIMINATION

- Section
- 210.300 Sex Discrimination

SUBPART D: OVERTIME

- Section
- 210.400 Determining Workweek for Overtime
- 210.410 Exclusions from the Regular Rate
- 210.420 Regular Rate of Pay for Determination of Overtime
- 210.430 Methods of Computing Overtime
- 210.440 Overtime – General

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SUBPART E: EMPLOYMENT OF AN INDIVIDUAL WITH A DISABILITY  
AT A WAGE LESS THAN THE MINIMUM WAGE RATE

- Section
- 210.500 Application for a License to Employ an Individual with a Disability at a Wage Less than the Minimum Wage Rate
- 210.510 Criteria Used to Establish the Necessity of a Sub-Minimum Wage

SUBPART F: EMPLOYMENT OF LEARNERS AT A WAGE  
LESS THAN THE MINIMUM WAGE RATE

- Section
- 210.600 General Provisions
- 210.610 Application to Employ a Learner
- 210.620 Employing More Than One Learner
- 210.630 Basic Learner Training Requirements
- 210.640 Student Learners in Work Study Programs

SUBPART G: RECORDS, POSTING AND NOTICE REQUIREMENTS

- Section
- 210.700 Contents of Records
- 210.710 Identification of Learner or Individual with a Disability
- 210.720 Minimum Records of Gratuities
- 210.730 Records Kept Outside of the Business Premises
- 210.740 Notice to Employers – Copies of the Act and Rules and Regulations

SUBPART H: INSPECTION PROCEDURE

- Section
- 210.800 Investigations
- 210.810 Investigation Procedures
- 210.820 Enforcement Procedures

SUBPART I: INFORMAL INVESTIGATIVE CONFERENCE  
ON INSPECTION RESULTS

- Section
- 210.900 Request for Review by Employer Subject to an Inspection

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210.910	Petition to Intervene by Employee or Former Employee Covered by an Inspection
210.920	Convening an Informal Investigative Conference
210.925	Continuances of Informal Investigative Conference
210.930	Application of the Rules of Evidence – Pleadings and Procedures in an Investigative Conference
210.940	Attorney and Witnesses in Investigative Conference
210.950	Contumacious Conduct in Investigative Conference
210.960	Telephone Conference
210.970	Request for Review

## SUBPART J: ASSESSMENT OF PENALTIES AND PUNITIVE DAMAGES

Section	
210.1000	Assessment and Notice of Underpayment, Penalties, and Punitive Damages
210.1010	Employer Conduct Deemed <del>Willful</del> <u>Willful</u>
210.1020	Uncontested Payment of Underpayments, Penalties, and Punitive Damages
210.1030	Exception to Notice of Underpayments, Penalties, and Punitive Damages
210.1040	Informal Investigative Conference on the Assessment of Underpayments, Penalties, and Punitive Damages
210.1050	Final Determination of Penalties and Punitive Damages

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 45 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

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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.

~~"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, shell fish, mollusks, crustaceans, algae and other aquatic plants, as defined in the Aquaculture Development Act [20 ILCS 215].

"Bona fide meal break" means a period in which an employee 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. An employee is not completely relieved from duty if the employee is required to perform any duties, whether active or inactive, while eating.

"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

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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.

"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'



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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.

"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 required to be on the employer's premises and is not completely relieved of all work-related duties.

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.

"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,

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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 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

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or other such individuals who perform similar functions as their primary duties.

"Rest Period" means a period of time with complete freedom from all duties and during which an employee may either leave the employer's premises without an obligation to be on call or stay on the employer's premises for purely personal pursuits.

"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".

"Sleep Period" means a regularly scheduled sleeping time of not more than eight hours, during which the employer provides sleeping quarters that comply with Illinois law and an employee can sleep, uninterrupted by work related 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 ~~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 ~~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

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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.

(Source: Amended at 45 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 210.125 Domestic Workers**

- a) Hours Worked. A domestic worker must be paid for all hours worked, excluding bona fide meal breaks, rest periods, and sleep periods.
- b) Recordkeeping. An employer shall maintain pay and time records for domestic workers, in accordance with 56 Ill. Adm. Code 210.700.
  - 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.
- c) 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. 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 with the agreement to provide nanny services for two separate households. The worker works a combined 50 hours during the week. The worker is entitled to 10 hours of pay at overtime rates.

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- 2) Example: A worker is hired as a cashier at a family owned restaurant and the restaurant owner asks the worker to take care of her children a couple of days a week. The worker works a combined 60 hours during the week. The worker is entitled to 20 hours of pay at overtime rates.
- d) 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, provided that:
- 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;
  - C) the employer maintains accurate records on a workweek basis of any lodging and meal credit taken for that work week, 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 does not exceed 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 does not exceed the actual cost.
- 2) An employer shall not take a lodging credit 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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- 3) When an employer takes a lodging or meal credit, the base wage rate used to calculate overtime shall include the lodging or meal credit.

(Source: Added at 45 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 45 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)