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MINIMUM WAGE LAW

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

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## SUBPART A: GENERAL PROVISIONS

~~Section 210.100 Application of the Act (Repealed)~~

~~All functions and powers of the Department of Labor and the Director under the 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 of 1938, as amended (29 U.S.C. 201 et seq.). In areas where the State and federal governments have concurrent powers under their respective statutes, the stricter of the two laws shall prevail.~~

**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.

"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.

"Administrative employee" means an employee who earns no less than a salary of \$455.00 per week or an amount no less than an employee is required to be paid to satisfy the overtime exemption for administrative employees under the Fair Labor Standards Act, whichever is greater and who 1) has a primary duty of performing office or non-manual work directly related to management policies or general business operations of the employer or the employer's customers and 2) customarily and regularly exercises discretion and independent judgment.

"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].

"Calendar week" means that seven consecutive day period beginning at 12:01 a.m. Sunday morning and ending on the following Saturday night at midnight.

"Companion" means a person who provides fellowship engaging in social or physical activities including but not limited to conversation, reading, entertainment, or accompaniment on errands or appointments. This person shall also provide and care for an elderly person or person with an illness, injury or disability who requires assistance in daily activities. Activities of daily living includes but is not limited to dressing, grooming, feeding, bathing, toileting and

transferring, as well as activities to assist in daily living such as meal preparation, driving, performing errands, light housework, assisting with finances, arranging for taking of medications and medical care for the elderly person or person with the illness, injury or disability, without regard to the amount of time spent performing these types of tasks. Persons who provide care and protection for infants and young children who do not have illnesses, injuries or disabilities are considered babysitters, not companions.

"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 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.

"Computer employee paid on salary" means an employee who earns no less than a salary of \$455 per week or an amount no less than an employee is required to be paid to satisfy the overtime exemption for computer employees under the Fair Labor Standards Act, whichever is greater, and who 1) has the primary duty of performing work requiring theoretical and practical application of highly-specialized knowledge in computer systems analysis, programming, and software engineering and 2) is employed as a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker in the computer software field and 3) consistently exercises discretion and judgment.

"Computer employee paid hourly" means an employee paid no less than \$27.63 per hour or an amount no less than an employee is required to be paid to satisfy the overtime exemption for computer employees paid hourly under the Fair Labor Standards Act, whichever is greater, and who:

1) has the primary duty of:

- a) application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software of system functional applications; or
- b) design, development, documentation analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on and related to user of system design

specifications; or

c) design, documentation, testing, creation for modification of computer programs related to machine operating systems; or

d) a combination of duties described in (a), (b) or (c), the performance of which requires the same level of skills; and

2) is employed as a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker in the computer software field.

“Creative Professional” means an employee who earns no less than a salary of \$455.00 per week or an amount no less than an employee is required to be paid to satisfy the overtime exemption for professional employees under the Fair Labor Standards Act, whichever is greater, and who performs work requiring invention, imagination, or talent in a recognized field of artistic endeavor. A creative endeavor includes music, writing, acting and the graphic arts. The mere collection, organization and recordation of information are not enough and thus journalists are not exempt if they only collect, organize and record information. Copyists and retouchers of photography do not qualify for the exemption because such work is not considered creative in nature.

A Creative Professional employee may be paid on a fee basis, rather than on a salary basis. An employee will be considered to be paid on a “fee basis” within the meaning of these regulations if the employee is paid an agreed sum for a single job regardless of the time required for its completion. These payments resemble piecework payments with the important distinction that generally a “fee” is paid for the kind of job that is unique rather than for a series of jobs repeated an indefinite number of times and for which payment on an identical basis is made over and over again. The critical distinction is whether the worker confronts “unique circumstances” under the facts of that case. If such is the case the worker satisfies the requirements for being exempt from overtime. However if the circumstances of the work is such that the employee is performing “a series of jobs which are repeated an indefinite number of times” but applied to various situations such as applying routine protocols to different situations, in such cases the employee would not qualify for the professional exemption. Payments based on the number of hours or days worked and not on the accomplishment of a given single task are not considered payments on a fee basis.

To determine whether the fee payment meets the minimum amount of salary required for exemption under these regulations, the amount paid to the employee will be tested by determining the time worked on the job and whether the fee payment is at a rate that would amount to at least \$455 per week if the employee worked 40 hours. Thus, an artist paid \$250 for a picture that took 20 hours to

complete meets the minimum salary requirement for exemption since earnings at this rate would yield the artist \$500 if 40 hours were worked.

"Department" means the Illinois Department of Labor or a duly authorized designee.

"Deduction" occurs in the current pay period.

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

"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:

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

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

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

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

5)the permanency of the relationship;

6)the skill required in the claimed independent operation;-

7)the amount of initiative, judgment or foresight in open market competition with others required for the success of the claimed independent contractor.

~~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 shall be which is controlling in determining an individual to be an employee, and not tax status or any specific designations or terminology relating to the individual's job or position. 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.

“Executive employee” means an employee who earns no less than a salary of \$455.00 per week or an amount no less than an employee is required to be paid to satisfy the overtime exemption for professional employees under the Fair Labor Standards Act, whichever is greater and who 1) has the primary duty of the management of the enterprise or a recognized department or subdivision and 2) who customarily and regularly directs the work of two or more employees.

"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 he or she is required or permitted to work for the employer. An employee is not considered to be on duty when the employee is completely relieved from duty and the employee's principle activities, including being completely relieved from activities closely related to and performed in support of the employee's principle activities such as changing in or out of required protective equipment, for a period sufficient to use the time effectively for his or her own purposes. Even if the work is not requested, if an employer knows or has reason to know that the work is being performed, the work is suffered or permitted and the time must be included within compensable time as hours worked. Management shall not accept the benefit of work without compensating an employee. The mere promulgation of a rule against work is insufficient and management has the obligation to exercise control over the employees and ensure that work is not performed if it does not want the work included as hours worked. If the employer knows or has reason to know that employees are performing work at the beginning or end of a shift, such time must be compensated and included in hours worked. Hours worked can include work whether on the job site, away from the premises or at an employee's home. For example:

An employee's meal periods and time spent on-call away from 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. For example, office employees required to eat at their desks and continue working or factory workers required to be at their machines and prepared to work while eating are working while eating and is considered hours worked.

An employee's travel, performed within the scope of employment for the

employer's benefit (for example, in response to an emergency call back to work outside 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 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 last amended at 26 FR 49018860. This may include but not be limited to responses to emergency calls outside of regular business hours, or special requests to perform a particular assignment.

Time spent performing activities that are closely related and are performed in support of the employee's principal activities such as if an employee cannot perform their principal work related activities without performing these other activities is to be included within hours worked. Examples of activities that are included within principal activities and must be included as hours worked are the following:

- 1) Time spent by an employee who works in a steel mill or a food processing plant putting on or removing certain clothes or protective equipment required by the employer on the employer's premises and but for which the employee cannot perform his/her principle activities prior to the commencement of a shift or prior to returning to work after a meal break or other break or at the end of the shift or prior to taking a meal break or other break constitutes time spent performing an integral part of the employee's principal activities and constitutes hours worked that must be included as compensable time regardless of any agreement to the contrary.
- 2) On the other hand if changing of clothes is merely a convenience to the employee and not directly related to the principal activities, it would be considered as a "preliminary" or "postliminary" activity rather than a principle part of the activity and not included in hours worked.
- 3) If as a preliminary activity to the operation of a machine, an employee at the commencement of the work day oils, greases or cleans the machine or installs parts to make the machine operable or has to inspect the machine, product or work site or take other necessary steps before commencing operations, such activities are principal activities and an

indispensable part of the daily work related activities and constitute hours worked that must be included as compensable time regardless of any agreement to the contrary.

- 4) If inspection of a vehicle and all the tools and parts contained in a truck before leaving for a job site is required or loading of a truck is required prior to leaving to a work site, such activities are a principal and an indispensable part of the daily work related activities and constitute hours worked that must be included as compensable time regardless of any agreement to the contrary. If there is an inspection and inventory required at the end of the shift or prior to lunch or breaks, that time must be included within compensable time as hours worked.
- 5) An employee who may be employed at a call center in connection with his/her work may be required at the commencement of his or her work day, to start, log-in to a computer and sign in to software and telephone applications related to the performance of his or her job duties. Such activity is an integral part of the principal activity and constitutes hours worked that must be included as compensable time regardless of any agreement or understanding to the contrary.
- 6) A nurse required to remain on the premises at the end of the shift to complete patient charts and/or to inform the next shift of conditions pertaining to the patients constitutes hours worked and are an integral part of the principle activity that must be included as compensable time regardless of any agreement or understanding to the contrary.

Where time associated with these related activities affects a similarly situated group of employees, and the activities are general in nature rather than specific to the task of each individual employee, such as where all employees on a shift are required to don and doff protective equipment prior to or at the conclusion of a shift or meal break, the employer may use an average period, reasonably calculated to be an allowance for these activities. On the other hand, a nurse who is required to perform specific activities at the end of a shift, which are unique to the employee and the

time varies depending upon the nature of the tasks, the time should be recorded on an individual basis.

In general attendance at lectures, meetings, training programs and similar activities is included in hours worked unless all the following four criteria are met:

- 1) Attendance is outside the employee's regular working hours;
- 2) Attendance is voluntary (Attendance is not voluntary if it is required by the employer or if the employee is given to understand or led to believe that the employee's present working conditions or continued employment would be adversely affected by nonattendance);
- 3) The course, lecture or meeting is not directly related to the employees job (Training directly related to the employee's job is training designed to make the employee handle the job more effectively as distinguished from training for another job or for a new or additional work skill. For example a server who is told to "shadow" or follow another server in a restaurant's dining room at the inception of employment to learn the restaurant's procedures and manner of conducting business is hours worked and must be compensated); and
- 4) The employee does not perform any productive work during attendance at such programs.

If an employee on their own initiative attends a school, pursues a course of instruction, or engages in a program of training after hours, the time is not included as hours worked, even if the courses are related to their job.

Time spent in an organized program of related, supplemental instruction by employees working under bona fide apprenticeship programs may be excluded from working time if the following criteria are met: (a) The apprentice is employed under a written apprenticeship agreement or program which substantially meets the fundamental standards of the Bureau of Apprenticeship and Training of the U.S. Department of Labor; and(b) Such time does not involve productive work or performance of the apprentice's regular duties. If the above criteria are met, the time spent in such related supplemental training shall not be counted as hours worked

unless the written agreement specifically provides that it is hours worked.  
The mere payment or agreement to pay for time spent in related  
instruction does not constitute an agreement that such time is hours  
worked.

"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 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, 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, 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.

"Intern" means an individual who is performing services for an employer but such

services are to the benefit of the intern's learning and vocational training. Although no one factor is dispositive, other factors to consider, in determining whether an individual is a bona fide "intern" are:

- 1) interns do not displace regular employees and work under close supervision;
- 2) interns are not necessarily entitled to a job at the end of the training period;
- 3) interns understand that they are not entitled to wages for the time spent in the training program;
- 4) an employer that provides training cannot receive any immediate advantage from the training and in fact the training may interfere in the operations of the employer; and
- 5) the training provided is similar to what would be received in a vocational school.

"Joint Employer" means a single individual can be considered an employee of more than one employer when the employers exert significant control over the same employees and it can be shown the employers share or co-determine essential terms and conditions of employment. Whether joint employment exists is to be determined based upon the facts of each particular case. Factors to be considered, although no one factor is dispositive, in determining whether a joint employer relationship exists includes 1) does the employer have day to day supervision and direction of the employees, 2) does the employer hire, fire, demote or promote employees, 3) does the employer determine the rate of payment, method of payment and work hours, and 4) does the employer maintain employment records.

"Learned Professional" means an employee who earns no less than a salary of \$455.00 per week or an amount no less than an employee is required to be paid to satisfy the overtime exemption for professional employees under the Fair Labor Standards Act, whichever is greater, and who 1) has the primary duty of performing work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study and 2) consistently exercises discretion and judgment.

A "Learned Professional" employee may be paid on a fee basis, rather than on a salary basis. An employee will be considered to be paid on a "fee basis" within the meaning of these regulations if the employee is paid an agreed sum for a

single job regardless of the time required for its completion. These payments resemble piecework payments with the important distinction that generally a "fee" is paid for the kind of job that is unique rather than for a series of jobs repeated an indefinite number of times and for which payment on an identical basis is made over and over again. The critical distinction is whether the worker confronts "unique circumstances" under the facts of that case, and where such is the case the worker satisfies the requirements for being exempt from overtime. However if the circumstances of the work is such that the employee is performing "a series of jobs, which are repeated an indefinite number of times," but applied to various situations such as applying routine protocols to different situations the employee would not qualify for the professional exemption. Payments based on the number of hours or days worked and not on the accomplishment of a given single task are not considered payments on a fee basis.

To determine whether the fee payment meets the minimum amount of salary required for exemption under these regulations, the amount paid to the employee will be tested by determining the time worked on the job and whether the fee payment is at a rate that would amount to at least \$455 per week if the employee worked 40 hours. Thus, a doctor is paid a fee of \$500 to create a medical protocol that took 20 hours to complete meets the minimum salary requirement for exemption since earnings at this rate would yield the doctor \$1000 if 40 hours were worked.

"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.

"Outside Sales employee" means an employee who 1) is employed for the purpose of and customarily and regularly engaged away from the employer's place of business in making sales; or in obtaining orders or contracts for services; or for the use of facilities for which a consideration will be paid by the client or customer and 2) does not devote more than 20 percent of the hours worked by nonexempt employees of the employer to activities that are not incidental to and in conjunction with the employee's own outside sales or solicitations.

"Reduction" occurs in a future pay period.

"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.

“Salary” means a predetermined amount constituting all or part of employee’s compensation received each pay period on a weekly or less frequently basis, which amount is not subject to reduction because of variations in the quality or quantity of the work performed. Compensation that is subject to change by the employer at the end of each pay period is not considered a salary. However, a pay structure involving a set minimum amount being paid every pay period, but supplemented based upon performance or incentives such as a commission or bonus, qualifies as a “salary basis” of compensation. In other words, additional compensation besides the salary is not inconsistent with the salary basis of payment. The employee must receive his full salary for any week in which he performs any work without regard to the number of days or hours worked. Exempt employees need not be paid for any workweek in which they perform no work. An employee is not paid on a salary basis if deductions from the employee’s predetermined compensation are made for absences occasioned by the employer or by the operating requirements of the business. If the employee is ready, willing and able to work, deductions may not be made for time when work is not available. The test of payment on a salary basis will not be met, however, if the salary is divided into two parts for the purpose of circumventing the requirement of single payment ‘on a salary basis’. This policy is also subject to the general rule that an employee need not be paid for any workweek in which he performs no work.

Salaried employees may have fringe benefits affected by absences such as vacation accrual. In addition, an employer may have a policy that requires that an employee to draw against earned or accrued paid time off, such as a vacation bank or personal day allotment or the employer may advance against future accruals to compensate the employee for time missed during the work week, provided that the employee receives a payment amount equal to the guaranteed salary. An exempt employee who not have any accrued benefits or who has a negative balance still must receive the employee’s guaranteed salary for any absence(s) occasioned by the employer or the operating requirements of the business.

An employer may prospectively reduce an employee’s salary for legitimate business needs for a fixed or indefinite period of time prior to the period in which it is to apply unless done so frequently that the actions of the employer reflect an attempt to pay an hourly wage rather than a fixed and predetermined salary. However, an employer violates the salary test when the employer makes day to day or week to week determinations based upon whether an employee is needed or the amount the employee shall be paid.

The prohibition against deductions from pay in the salary basis requirement is subject to the following exceptions:

- (1) Deductions from pay may be made when an exempt employee is absent from work for one or more full days for personal reasons, other than sickness or disability. Thus, if an employee is absent for two full days to handle personal affairs, the employee's salaried status will not be affected if deductions are made from the salary for two full-day absences. However, if an exempt employee is absent for one and a half days for personal reasons, the employer can deduct only for the one full-day absence.
- (2) Deductions from pay may be made for absences of one or more full days occasioned by sickness or disability (including work-related accidents) if the deduction is made in accordance with a bona fide plan, policy or practice of providing compensation for loss of salary occasioned by such sickness or disability. The employer is not required to pay any portion of the employee's salary for full-day absences for which the employee receives compensation under the plan, policy or practice. Deductions for such full-day absences also may be made before the employee has qualified under the plan, policy or practice, and after the employee has exhausted the leave allowance under the plan, policy or practice. Thus, for example, if an employer maintains a short-term disability insurance plan providing salary replacement for 12 weeks starting on the fourth day of absence, the employer may make deductions from pay for the three days of absence before the employee qualifies for benefits under the plan; for the twelve weeks in which the employee receives salary replacement benefits under the plan; and for absences after the employee has exhausted the 12 weeks of salary replacement benefits. Similarly, an employer may make deductions from pay for absences of one or more full days if salary replacement benefits are provided under a State disability insurance law or under a State workers' compensation law.
- (3) While an employer cannot make deductions from pay for absence of an exempt employee occasioned by jury duty, attendance as a witness or temporary military leave, the employer can offset any amounts received by an employee as jury fees, witness fees or military pay for a particular week against the salary due for that particular week without loss of the exemption.

- (4) Deductions from pay of exempt employees may be made for penalties imposed in good faith for infractions of safety rules of major significance. Safety rules of major significance include those relating to the prevention of serious danger in the workplace or to other employees, such as rules prohibiting smoking in explosive plants, oil refineries and coal mines.
- (5) Deductions from pay of exempt employees may be made for unpaid disciplinary suspensions of one or more full days imposed in good faith for infractions of workplace conduct rules. Such suspensions must be imposed pursuant to a written policy applicable to all employees. Thus, for example, an employer may suspend an exempt employee without pay for three days for violating a generally applicable written policy prohibiting sexual harassment. Similarly, an employer may suspend an exempt employee without pay for twelve days for violating a generally applicable written policy prohibiting workplace violence.
- (6) An employer is not required to pay the full salary in the initial or terminal week of employment. Rather, an employer may pay a proportionate part of an employee's full salary for the time actually worked in the first and last week of employment. In such weeks, the payment of an hourly or daily equivalent of the employee's full salary for the time actually worked will meet the requirement. However, employees are not paid on a salary basis within the meaning of these regulations if they are employed occasionally for a few days, and the employer pays them a proportionate part of the weekly salary when so employed.
- (7) An employer is not required to pay the full salary for weeks in which an exempt employee takes unpaid leave under the Family and Medical Leave Act. Rather, when an exempt employee takes unpaid leave under the Family and Medical Leave Act, an employer may pay a proportionate part of the full salary for time actually worked. For example, if an employee who normally works 40 hours per week uses four hours of unpaid leave under the Family and Medical Leave Act, the employer could deduct 10 percent of the employee's normal salary that week.

When calculating the amount of a deduction from pay allowed under this section, the employer may use the hourly or daily equivalent of the employee's full weekly salary or any other amount proportional to the time actually missed by the

employee. A deduction from pay as a penalty for violations of major safety rules under paragraph (4) of this section may be made in any amount.

"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 is engaged in an occupation which gratuities are customarily recognized as part of the remuneration where the employee is engaged in duties that include customer interaction. An employee cannot be deemed a tipped employee unless he or she "customarily and regularly" is in the occupation in which he or she is engaged and receives \$20 \$30.00 or more per month in gratuities. Thus, in determining whether an employee is a tipped employee and a tip credit can be taken under the Act, it is necessary to determine whether the payment to the employee constitutes a gratuity, whether the employee customarily and regularly receives \$30.00 or more per month in the occupation in which the employee is engaged, and whether the employee is engaged in an occupation. In determining a monthly period, the calendar month need not be used. An appropriate recurring monthly period beginning on the same day of the calendar month may be used. An employee will not be deemed to customarily and regularly receive \$30 or more per month because other employees similarly situated or in a like group receive \$30 or more per month or have a record of receiving \$30 or more per month. An individual determination is to be made in each instance.

A gratuity is a monetary contribution made by a guest or patron, in the guest's sole discretion as to the amount or whether it is to be given, to an employee in recognition of service rendered. Only tips actually received by an employee as money belonging to the employee may be counted in determining whether the person is a "tipped employee" within the meaning of the Act. In the absence of an agreement to the contrary between the recipient and a third party, a tip becomes the property of the person in recognition of whose service it is presented by the customer. In addition to cash sums presented by customers which an employee keeps as his own, tips received by an employee include, within the meaning of the Act, amounts paid by bank check or other negotiable instrument payable at par and amounts transferred by the employer to the employee pursuant to directions from credit customers who designate amounts to be added to their bills as tips.

A compulsory charge for service imposed on a customer by an employer's establishment is not a gratuity under the Act, and even if distributed by the employer to its tipped employees, it cannot be counted as a gratuity in applying

the provisions of 4(c) of the Act. Special gifts in forms other than money or its equivalent as above described such as theater tickets, passes, or merchandise, are not counted as tips received by the employee for purposes of the Act. Similarly where negotiation between an employer's establishment and a customer for banquet facilities include amounts for distribution to employees of the establishment, the amounts so distributed cannot count as gratuities for purposes of the Act. However, where such sums are distributed to employees, they may be used in their entirety to satisfy the minimum wage requirements of the Act.

An employee, either full time or part time, who does not receive \$30.00 or more per month in tips customarily and regularly is not a tipped employee and must receive the full compensation required by the Act without deduction for tips received. The phrase "customarily and regularly" signifies a frequency which must be greater than occasional, but which may be less than constant. An employee who only occasionally or sporadically receives tips totaling more than \$30.00 a month, such as at Christmas or New Years when customers may be more generous than usual, will not be deemed a tipped employee. Regardless of whether an employer has taken a tip credit, the employer is prohibited from using an employee's gratuities for any reason other than that which is permitted under the Act.

For example, in a restaurant setting, an employee who takes customer orders, serves the order and presents the bill for the order is performing the duties of the occupation of waiter or server and is engaged in an occupation in which gratuities are customarily recognized as part of the remuneration where the employee is engaged in duties that include interaction. However, where a waiter also cooks, washes dishes, expeditor, or performs other tasks normally associated with "the back of the house functions," those performing services outside the presence of customers and have no interaction with customers, are not considered a tipped employee when engaged in these "back of the house" functions. When the employee performs these latter functions the employer may not take a tip credit for the time the employee is performing the "back of the house" functions and must pay the employee the regular minimum wage for hours worked in these functions. This latter employee who performs dual functions may participate in a tip pooling arrangement. Consistent with the tip pooling provisions below, an employee engaged in duties that have little or no customer interaction, either direct or indirect, is not a tipped employee and may not participate in a tip pool.

"Tip Pool" means an arrangement whereby tips received by tipped employees are combined for redistribution or splitting. Where employees practice tip splitting, as where waiters give a portion of their tips to the busboys, both the amounts retained by the waiters and those given the busboys are considered tips of the individuals who retain them, in applying the provisions of the Act. Similarly,

where an accounting is made to an employer for the employee's information only or in furtherance of a pooling arrangement whereby the employer redistributes the tips to the employees upon some basis to which they have mutually agreed among themselves, the amounts received and retained by each individual as his own are counted as his tips for purposes of the Act. There is not a maximum contribution percentage on valid mandatory tip pools. An employer must notify its employees of any required tip pool contribution amount, may only take a tip credit for the amount of tips each employee ultimately receives, and may not retain any of the employees' tips for any other purpose. A lawful or sharing arrangement cannot require tipped employees to pool or share their gratuities with non-tipped employees and may only include those employees who customarily and regularly receive tips. Bussing staff, while not likely to receive gratuities from customers, may or may not directly interact with customers, but by virtue of their bussing duties work in close proximity to the customers and indirectly interact with customers and may be considered tipped employees and participate in a tip pool. However, "back of the house" employees, along with managers, may not participate in the tip pool.

"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. A volunteer may receive a stipend or payment of expenses without losing status as a volunteer.

"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 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.

"Waiting time" means time that may be included as hours worked depending upon the particular circumstances. The determination of whether waiting time is to be included involves "scrutiny and construction" of the agreements between the parties, appraisal of the practical construction of the working agreement by conduct, consideration of the nature of the services, and its relation to the waiting time. Periods during which an employee is completely relieved from duty and which are long enough to enable the employee to use such time effectively for his/her own purposes are not hours worked. An employee to be completely

relieved from duty and to be able to use the time effectively for his/her own benefit must be told in advance he/she is relieved and is not to commence until a specific time. Only allowing the employee to leave the premises is not sufficient on its own to show that the employee is completely relieved from duty. Examples of waiting time, which must be included in hours worked are as follows:

- 1) A courier who stands idle waiting for an assignment, an employee of a staffing agency who is required to report to the agency to wait for assignment to a third party, a firefighter who reads a book while waiting for an alarm, and a field service technician who is waiting for a customer to get to the premises is work time that must be included in hours worked for purposes of compensation.
- 2) An employee who is required to remain on call on the employer's premises or so close thereto that he cannot use the time effectively for his own purposes is working while "on call" and such time is considered as hours worked. An employee who is not required to remain on the employer's premises but is merely required to leave word at home or with company officials where the employee may be reached is not working while on call, and such time is not considered hours worked. However, an employee who provides companionship services and acts as a substitute for those who need a day off and is told that every Sunday between the hours of 6:00 am and 7:00 am that they are on call and must stay within a 10 minute travel time of their house is on call. The one hour is considered as hours worked. If however the employee only needs to be available to be contacted, between the hours of 6:00 am and 7:00 am, the one hour is not considered as hours worked.

"Work" means the period of time between when an employee commences his or her principal activity or activities and time at which he/she ceases his/her principal activity or activities and generally includes all time which an employee is required to be on the employer's premises, on duty, or at a prescribed work place. The amount of time an employer permits an employee to work may be longer than the employee's scheduled shift, tour of duty or day depending upon when an employee commences or ceases his/her principal activities.

(Source: Amended at 20 Ill. Reg. 15312, effective November 15, 1996)

### **Section 210.120 The Use of Federal Definitions of Various Terms**

For guidance in the interpretation of the Act and this Part, 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.). The courts have recognized the Act and the Fair Labor Standards Act share a primary purpose and are governed by the same spirit and a single policy, and the Department will use for guidance the regulations and interpretations of the Administrator, Wage and Hour Division, U.S. Department of Labor of the Fair Labor Standards Act of 1938, 29 U.S.C. 301 et. seq in interpreting the provisions of the Act and these regulations, except to the extent the regulations and interpretations pertain to provisions of the Fair Labor Standards Act are more limiting, inconsistent with, or not contained in the Act or these Rules and Regulations.

### **Section 210.130 Length of Coverage for an Employer**

An employer remains subject to the Act for the rest of a quarter in which it employed a fourth employee, or for the entire pay period in which it employed a fourth employee, whichever period is longer.

### **Section 210.140 Uniforms**

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

### **Section 210.150 Forbidden Activity Covered by Other Laws**

Nothing in the Act or this Part 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 210.160 Communication with the Department and the Director**

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's Chicago office.

## **SUBPART B: ESTABLISHMENT OF MINIMUM WAGE ALLOWANCE FOR GRATUITIES**

### **Section 210.200 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. The employee must receive the meals and/or lodgings for which he or she is charged, and it is also essential that his/her 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 RELATION TO OTHER  
ACTS AND MISCLASSIFICATION

**Section 210.300** ~~Sex Discrimination~~ Relation to Other Acts

- a) The Act forbids wage discrimination between employees on the basis of sex. The Illinois Department of Human Rights has the responsibility of enforcement of the Illinois Human Rights Act [775 ILCS 5] which also prohibits discrimination in employment based on sex. The Department of Labor has the authority to enforce the Equal Pay Act, a statute that prohibits gender based discrimination. The Illinois Department of Labor will cooperate with the Department of Human Rights in enforcing the similar sex discrimination provisions in their respective Acts as they relate to wages.
- b) Payment of the applicable minimum wage rate and overtime pay as provided for in the Act as well as the penalties and punitive damages provided for in Section 12 of the Act shall be applicable as an appropriate remedy for any person found to have been misclassified under the Employee Classification Act, 820 ILCS 185/1 et seq.

SUBPART D: OVERTIME

**Section 210.400** **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 does need not need to 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.

- c) In the event an employer fails to establish a fixed and regular work week, the Director shall consider a calendar week as the applicable work week. "~~Calendar week~~" means ~~that seven consecutive day period beginning at 12:01 a.m. Sunday morning and ending on the following Saturday night at midnight.~~

#### Section 210.410 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 holidays or other amounts that are not measured by or dependent on hours worked, production or efficiency; 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; reasonable payments for traveling expenses, or other expenses, incurred by an employee in the furtherance of his employer's interests and properly reimbursable by the employer and other similar payments to an employee that are not made as compensable for the employee's hours of employment; and
- c) Sums such as bonuses paid in recognition of services during a given period if either:
- 1) both the fact that the payment is to be made and the amount of the payment are determined at the sole discretion of the employer, at or near the end of the period and not pursuant to a prior contract, agreement or promise causing the employee to expect such payment regularly determined at the sole discretion of the employer, or
  - 2) made pursuant to a bona fide thrift, profit sharing or savings plan, or
  - 3) in recognition of a special talent (such as talent fees) paid to performers, including announcers, on radio and television programs; 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 210.420 Regular Rate of Pay for Determination of Overtime**

- a) Section 4a of the Act 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 shall 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 a basis of the hourly rate derived from such earnings.

#### **Section 210.430 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 employees 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 converted 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 receive 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.
- 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 or the fair value of such goods must be included in the regular rate (for example, lodging would be one such facility).

- 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) Tipped employees. The regular rate of pay of a tipped employee is determined by dividing the employee's total remuneration for employment (except statutory exclusions) in any workweek by the total number of hours actually worked by the employee in that workweek for which such compensation was paid. A tipped employee's regular rate of pay includes the amount of tip credit taken by the employer per hour, if any, and the cash wage paid by the employer. Any gratuities received by the employee in excess of the tip credit are not included in the regular rate. Such gratuities are not payments made by the employer to the employee as remuneration for employment within the meaning of the Act.
- l~~m~~) 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~~n~~) 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 210.440 Overtime – General**

- a) The Act does not require that an employee be paid overtime compensation for hours in excess of eight per day, or for work on Saturdays, Sundays, holidays or regular days of rest, unless hours worked exceed forty per week.
- b) The Act does not require holiday, vacation, sick pay or other similar causes be included in the regular rate of the employee. Hours that are paid for, but not worked, will not increase the regular rate.
- c) Sums paid as gifts such as those made at holidays or other amounts that are not measured by or dependent on hours worked may not be credited towards, or used to offset from, overtime compensation due under the Act.

**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**

- a) No employer subject to the provisions of the Act may employ an individual with a disability at less than the minimum wage rate pursuant to Section 4 of the Act without first obtaining a license from the Director.
- b) An official application form for a license to employ an individual with a disability at a wage less than the minimum wage rate shall be provided by the Director. The employer shall answer all questions contained on the form. The application shall be signed jointly by the employer and the individual with a disability.
- c) The license shall be effective for a period not to exceed ~~one~~ two years. The individual may be paid the sub-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.
- d) Upon the expiration of said license, an employer of an individual with a disability may submit an 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.

- e) The Department may rely upon the factors and criteria utilized by the USDOL in determining whether to issue a license.

### **Section 210.510 Criteria Used to Establish the Necessity of a Sub-Minimum Wage**

- a) In order to determine that a wage lower than the minimum wage rate provided in Section 4 of the Act is appropriate, the following criteria will be considered:
  - 1) the specific nature and extent of an employed individual's disability and the direct correlation between the individual's disability and his/her productivity on the job;
  - 2) a comparison of the wages paid generally to experienced employees not disabled in the locality in which the work is being performed to an individual with a disability engaged in work of a similar character at a sub-minimum wage rate;
  - 3) the productivity of an individual with a disability compared to the norm established for nondisabled workers through the use of a verifiable work measurement method (as outlined in the regulations promulgated under the Fair Labor Standards Act of 1938, at 29 C.F.R. 525.12 (h) (1994, no subsequent dates or editions), as amended at 54 FR 32928 or the productivity of experienced nondisabled workers employed in the locality engaged in work of a similar character; and
  - 4) the wage rate to be paid to an individual with a disability for work of similar character performed by experienced nondisabled workers.

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 Director shall not issue a license to an employer to pay a lower, disability-based wage to an individual with a disability if the employer: eliminated essential functions that the individual could perform, lowered production standards that the individual could meet, or lowered the wages of the individual because it provided the individual with a reasonable accommodation. The Director will use the Americans with Disabilities Act of 1990, as amended (29 U.C.S. 12111 et seq.) as a guide in this area.
- c) 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 Director will use the Age Discrimination in Employment Act of 1967, as amended (29 U.S.C. 621 et seq.) as a guide in this area.

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

**Section 210.600 General Provisions**

- a) No employer subject to the provisions of the Act shall employ a learner at less than the minimum wage pursuant to Section 4 of 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.
- b) 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/her required training, must thereupon be paid at wages not less than the minimum wage required by Section 4 of the Act.
- c) 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 requires 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, upon forms provided by the Department.
- d) The employer has the burden of establishing that, for the occupation for which the learner is to be trained, there is a bona fide training program for the occupation, and the length of the training period is reasonable in light of the skills required to attain a level of minimum proficiency.

**Section 210.610 Application to Employ a Learner**

An official application form for a license to employ learners at a wage less than the minimum wage rate shall be provided by the Director. The employer shall provide all the information required by the form, including but not limited to a statement clearly outlining the training program and the process in which the learner will be engaged while in training. The information shall further specify 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 210.620 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 for each learner hired pursuant to a license which permits employment of more than one learner in the same capacity.

### **Section 210.630 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 210.640 Student Learners in Work Study Programs**

- a) A student learner may be paid at a sub-minimum wage rate in accordance with Section 6 of the Act for the length of the course or for the time in which he or 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 Director. A license may be issued for the purpose of employing more than one student learner in the same capacity.

## **SUBPART G: RECORDS, POSTING AND NOTICE REQUIREMENTS**

### **Section 210.700 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; ~~and~~
- k) Dates of payment of each pay period covered by the payment; and
- l) Manner in which employees are paid (i.e. check, cash).

#### **Section 210.710 Identification of Learner or Individual with a Disability**

- a) Individuals employed as a learner, or individuals with disabilities employed at a sub-minimum wage, shall be identified on the payroll as learners or individuals with disabilities, together with their rate of pay and occupation.
- b) Whenever possible, records of learners and individuals with disabilities are to be maintained in a separate file or folder for ready accessibility.

#### **Section 210.720 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 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 but the report shall not include the amount that the employee tipped out to other employees. 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 40% of the applicable statutory minimum wage). This amount may not include any amounts that an employee "tips out" to other employees, pools or otherwise pays to other employees or the employer. 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 pay period along with a notice advising the employee that the employee must receive no less than \$8.25 an hour, including tips and that the minimum the employer may pay excluding tips is \$4.95, and that the employee can only be required to share tips with other tipped employees.
- 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 210.730 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 duly authorized representatives of the Director 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 Director's representatives, including travel, travel time, meal and lodging for each representative of the Director conducting said examination or investigation.

#### **Section 210.740 Notice to Employers Employees – ~~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/her business, establishment or enterprise and to post on its premises a summary of the minimum wage and overtime requirements provided in the Act. This may be accomplished by placing a poster in an area readily accessible to the employees.
- b) ~~The Director shall, on request, provide every employer subject to any provisions of the 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/herself or his/her 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.

## SUBPART H: INSPECTION PROCEDURE

### Section 210.800 Investigations

- a) Investigations under the Act may be generated by employee complaints and regular inspections (including target and re-inspections) by the Department.
- b) Employees, or former employees, who wish to file a complaint must complete and submit an official application form provided by the ~~Director~~ Department. Complainants shall answer all questions contained on the form, including, but not limited to: the complainant's name, address, telephone number, social security number, and if 18 years of age or younger, his/her birthdate; 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 subsection (b) of this Section may be accepted by the ~~Director~~ Department if it otherwise contains the information determined by the ~~Director~~ Department to be necessary for a proper investigation and review of the alleged violation therein contained.
- d) Complaints must be filed within 1 year from the date of separation of employment or within 1 year after the alleged underpayment, whichever occurred later. The ~~Director~~ Department may investigate payments made to all employees for up to 3 years prior to the date the complaint was filed.

### Section 210.810 Investigation Procedures and Notice of Noncompliance

- a) A Compliance Officer will make an initial determination with respect to whether the employer, employees, and/or former employees are covered under the ~~Minimum Wage Law~~. Act.
- b) A Compliance Officer may interview the employer, employees, and/or former employees to gather information on such subjects as hours worked, rate and type of pay, meals, lodging, gratuities, age and other such conditions and practices of employment.
- c) A Compliance Officer will review the time and payroll records for each employee, and/or former 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) A Compliance Officer will notify the employer or his/her agent of the results of the investigation, including the amount of back wages penalties and/or damages due, if any.
- e) ~~The Director~~ Department will issue a written notice of noncompliance with the Minimum Wage Law to the employer or his/her agent when a Compliance Officer finds that back wages and/or penalties or damages are due.
- f) An employer which 1) acts willfully in underpaying its employees in violation of the Act or any rule adopted by the Department under the Act, or 2) who repeatedly underpays its employees in violation of the Act or any rule adopted by the Department under the Act or 3) who acts in reckless disregard in underpaying its employees in violation of this Act or any rule adopted by the Department under the Act shall be liable to the Director for penalties equal to 20% of its total underpayment and shall be additionally liable to each underpaid employee for damages equal to 2% of any such underpayment for each month following the date of payment during which such underpayment remained unpaid. The amount of the underpayment will be based on the findings of the Compliance Officer.
- 1) An employer's conduct shall be deemed 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.
- 2) 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.
- 3) An employer's conduct shall be deemed reckless, among other situations, if, as a result of previous advice of the Department, 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.
- g) This Act, as well as the Fair Labor Standards Act, includes in the definition of an employer as "any person acting directly or indirectly in the interest of the employer in relation to an employee". This includes holding individually liable

under the Act those persons who exercise supervisory authority over the employees and were responsible in whole or in part for the violation. In addition, officers and agents of an entity can be held individually liable under the Act when responsible for the violation. Factors to be considered in determining the economic reality of who is responsible for the violation are whether such officers or agents are individually liable are whether the officers or agents hold significant ownership interest in the entity, whether the officers or agents exercise control over significant aspects of the day to day functions of the entity, such as compensation of the employees, and whether during the period of the violation, the officers or agents made the decision to continue operations of the entity despite financial adversity.

- f) ~~The Director~~ Department may provide the employer, employees, and/or former employees with an opportunity to present further evidence and identify any issues in dispute at an informal investigatory conference pursuant to Subpart I of this Part.

#### **Section 210.820 Enforcement Procedures**

- a) ~~The Director~~ Department will seek voluntary compliance by the employer. The payment of back wages due the employees and/or former employees (plus any penalties and punitive damages assessed pursuant to Section 12 (ab) of the Act and ~~Subpart J of these Rules and Regulations~~) will be evidence of substantial compliance with the provisions of the Act. Payment shall be supervised, when possible, by the ~~Director~~ Department.
- b) ~~The Director~~ Department may require proof that the employees, and/or former employees, received all the back wages due them (plus any assessed punitive damages), and the ~~Director~~ Department may require the employer to send certified checks, cashier's checks, ~~or~~ money orders, or payroll checks including as the payee both the individual employee and the Department of Labor made payable to the "individual employees or the Department of Labor" and shall be sent, to the Department for disbursement. All checks for wages due shall have deductions for required federal and state taxes, including social security taxes.
- c) An employer shall pay the penalties owed to the Department stated in the "Notice of Noncompliance" by certified checks, cashier's checks or money orders made to the order of the Illinois Department of Labor.
- d) The employer shall pay the damages by issuing separate certified checks, cashier's checks, money orders or payroll checks made to the order of each underpaid employee covered by the inspection or the Illinois Department of Labor. The employer shall tender its penalty and damage payments to the office

the Department designates.

- ee) If the employer does not voluntarily comply within a reasonable amount of time, the ~~Director~~ Department may bring either a civil or criminal action against the employer as provided for in Sections 11 and 12 of the Act, ~~and may conduct an administrative hearing for a final determination of penalties and punitive damages pursuant to Section 12 of the Act and Subpart J of these Rules and Regulations.~~

#### SUBPART I: INFORMAL INVESTIGATIVE CONFERENCE ON INSPECTION RESULTS

##### **Section 210.900 Request for Review by Employer Subject to an Inspection**

- a) Any employer contesting the findings of a Compliance Officer shall file a written request for an informal investigative conference within 15 days after receipt of the ~~Director's~~ Department's written notice of noncompliance with the ~~Minimum Wage Law Act.~~
- b) Such request shall be prominently marked "Request for Review of Inspection Results" on both the letter and the envelope and shall be mailed or delivered to the Department's Chicago office. The request must set forth the reasons why the employer believes the Compliance Officer's findings are incorrect as a matter of law or fact, or, if applicable, any newly discovered evidence the employer could not have discovered during the course of the inspection. Late submissions need not be considered by the ~~Director~~ Department.

##### **Section 210.910 Petition to Intervene by Employee or Former Employee Covered by an Inspection**

- a) The ~~Director~~ Department may provide an employee or former employee covered by a Compliance Officer's completed inspection the opportunity to present further evidence at an informal investigative conference to be held before a duly authorized representative of the ~~Director~~ Department. Petitions to Intervene must be made in writing within 15 days after the date the employee or former employee receives notification of back wages or that the claim is dismissed.
- b) Such a petition shall be prominently marked "Petition to Intervene in Minimum Wage Law Investigation" on both the letter and the envelope and shall be mailed or delivered to the Department's Chicago office. The petition must set forth the reasons why the employee or former employee believes the Compliance Officer's findings are incorrect as a matter of law or fact, and that the ~~Director's~~ Department's enforcement of the inspection results as a practical matter may impair or impede his/her ability to protect his/her rights under the Act.

(Source: Amended at 29 Ill. Reg. 4734, effective March 21, 2005)

### Section 210.920 Convening an Informal Investigative Conference

- a) The ~~Director~~ Department shall make an initial determination with respect to the legal and factual merits of a "Request for Review of Inspection Results" or a "Petition to Intervene in Minimum Wage Law Investigation". If the Department determines that the request or petition presents a reasonable issue of law or fact, a duly authorized representative of the ~~Director~~ Department may convene an informal investigative conference for purposes of obtaining evidence and identifying the issues in dispute.
- b) A written notice of an informal investigative conference shall be sent, not less than 10 days prior to the date of the conference, to the employer and a petitioning employee or former employee, and may also be sent to those employees or former employees covered by the inspection at issue who are the subject of a "Request for Review of Inspection Results" or a "Petition to Intervene in Minimum Wage Law Investigation." Each notice shall identify the individual requested to attend, along with any books, records or documents the party must produce at the conference. The Department may allow such other persons as the Department deems appropriate to attend the conference and whose presence will not impair or impede the conference.
- c) If a request or petition is denied, the ~~Director~~ Department will notify the party who filed the request or petition of his/her determination in writing.
- d) After the informal investigative conference has concluded and following any additional investigation by the Department, the Department shall issue in writing a final determination. Absent the Employer's voluntary compliance within a reasonable amount of time, the Department may commence a civil or criminal action against the employer as provided for in Sections 11 and 12 of the Act.

### Section 210.925 Continuances of Informal Investigative Conference

Parties shall be prepared to proceed at the informal investigative conference, presenting all testimonial and/or documentary evidence necessary to support their positions. A request by one party for a continuance will be granted prior to the conference only ~~if the other party agrees and the Director's representative in charge of the conference grants permission. A request for a continuance must be made in person to the Director's representative at the time of the conference and will be granted only upon a showing of good cause.~~ Examples of good cause include the non-receipt or delayed receipt of mail or the unavailability of a witness for a party due to accident, illness or other circumstances beyond the party's control.

(Source: Added at 20 Ill. Reg. 15312, effective November 15, 1996)

### **Section 210.930 Application of the Rules of Evidence –Pleadings and Procedures in an Investigative Conference**

When a duly authorized representative of the ~~Director~~ Department conducts an informal investigative conference, she/he is not bound by the rules of evidence or by any technical or formal rules of pleading or procedure.

### **Section 210.940 Attorney and Witnesses in Investigative Conference**

A party to an informal investigative conference may be accompanied at the conference by his/her attorney and by a translator, if necessary. The parties may bring witnesses to the conference, but the ~~Director's~~ Department's representative in charge of the conference shall decide which witnesses, if any, shall be heard, and the order in which they shall be heard. The ~~Director's~~ Department's representative may exclude witnesses and other persons from the conference when they are not giving testimony. The ~~Director's~~ Department's representative shall conduct and control the proceedings. No tape recordings, stenographic report or other verbatim record of the conference shall be made.

### **Section 210.950 Contumacious Conduct in Investigative Conference**

If any individual becomes disruptive or abusive, the ~~Director's~~ Department's representative conducting the investigative conference may exclude the person from the proceeding. The ~~Director's~~ Department's representative, in his/her discretion, may take any of the following actions: continue the conference without the participation of the excluded individual, render a decision based upon the evidence previously presented, dismiss the employee's claim, or strike the subject individual's response.

### **Section 210.960 Telephone Conference**

- a) The ~~Director~~ Department does not routinely hold investigative conferences by telephone. Written requests to participate by telephone must be received by the Department's Chicago office no later than 7 days prior to the hearing conference date. The request shall be prominently marked "Request for Telephone Hearing Conference" on both the letter and the envelope. Such request shall be typewritten or clearly written and shall contain a compelling reason why the party needs to participate by telephone and the name, address and telephone number of the person to be contacted.
- b) A party shall not consider its request granted unless the participant receives notice by telephone or letter of the ~~Director's~~ Department's approval prior to the

conference date.

**~~Section 210.970 Request for Review~~**

~~Requests for review of a determination from an informal investigative conference must be made in writing to the Department's Chicago office, within 15 days after the decision. The request shall be prominently marked "Request for Review" on both the letter and the envelope. The request must set forth the reasons why the party believes the Director's duly authorized representative misconstrued the evidence or misapplied the law to the facts. Late submissions need not be considered by the Director.~~

**~~SUBPART J: ASSESSMENT OF PENALTIES AND PUNITIVE DAMAGES~~**

**~~Section 210.1000 Assessment and Notice of Underpayment, Penalties, and Punitive Damages (Repealed)~~**

- ~~a) The Director may conduct investigations, conferences, or hearings to determine whether an employer's conduct is willful for purposes of assessing penalties and punitive damages as provided under Section 12(a) of the Act.~~
- ~~b) An employer that willfully underpaid its employees shall be liable to the Director for penalties equal to 20% of its total underpayment and shall be additionally liable to each underpaid employee for punitive damages equal to 2% of any such underpayment for each month following the date of payment during which such underpayment remained unpaid. The amount of the underpayment will be based on the findings of the Compliance Officer. The Director will assess the penalties and punitive damages, and remit a written "Notice of Underpayment, Penalties, and Punitive Damages" to the employer for the underpayment, plus a 20% penalty and 2% punitive damages assessment.~~

**~~Section 210.1010 Employer Conduct Deemed Willful (Repealed)~~**

~~An employer's conduct shall be deemed 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.~~

- ~~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.

**Section 210.1020 Uncontested Payment of Underpayments, Penalties, and Punitive Damages (Repealed)**

- a) An employer shall pay the penalties stated in the "Notice of Underpayment, Penalties, and Punitive Damages" by certified check made to the order of the Illinois Department of Labor. The employer shall pay the punitive damages by issuing separate certified checks made to the order of each underpaid employee covered by the inspection or the Illinois Department of Labor. The employer shall tender its penalty and punitive damages payments to the Department's Chicago office.
- b) If the employer remits complete payment of back wages and assessed penalties and punitive damages pursuant to the "Notice of Underpayment, Penalties, and Punitive Damages", the Director may not take additional administrative or judicial action under the Act against the employer solely related to the particular Minimum Wage Law investigation at issue.

**Section 210.1030 Exception to Notice of Underpayments, Penalties, and Punitive Damages (Repealed)**

If the employer contests the "Notice of Underpayment, Penalties, and Punitive Damages", the employer shall file a written request for reconsideration. The request shall be prominently marked "Exception to Underpayment, Penalties, and Punitive Damages" on both the letter and the envelope, and shall be mailed via certified or registered mail to the Department's Chicago office, within 15 days after receipt of the Director's "Notice of Underpayment, Penalties, and Punitive Damages". The exception must set forth the reasons why the employer believes the Director erred in arriving at the amount of underpayment and/or the calculation of penalties and punitive damages, and/or erred in his/her determination that the employer willfully underpaid its employees. Late submissions need not be considered by the Director.

**Section 210.1040 Informal Investigative Conference on the Assessment of Underpayments, Penalties, and Punitive Damages (Repealed)**

- a) The Director shall make an initial determination with respect to the legal and factual merits of an "Exception to Underpayment, Penalties, and Punitive

~~Damages". If the exception presents a reasonable issue of law or fact, a duly authorized representative of the Director may convene an informal investigative conference for purposes of obtaining evidence and identifying the issues in dispute, pursuant to the procedures set forth in Subpart I, Sections 210.910 through 210.950 of this Part.~~

- ~~b) As a result of an informal investigative conference, the Director may reevaluate the Compliance Officer's findings and modify the underpayment, penalties, and punitive damages assessment accordingly.~~
- ~~e) If the employer remits payment of the modified assessment of the underpayment, penalties, and punitive damages, pursuant to the procedures set forth in Section 210.1030(a) of this Subpart, if any is due, the Director will not take additional administrative or judicial action under the Act against the employer solely related to the particular Minimum Wage Law investigation at issue.~~
- ~~d) If the exception is denied, the Director will notify the party who filed the request of his/her findings in writing.~~

~~**Section 210.1050 Final Determination of Penalties and Punitive Damages (Repealed)**~~

~~If the Director finds no merit to a properly filed "Exception of Underpayment, Penalties, and Punitive Damages", or if no payment is forthcoming on either an uncontested or modified finding of underpayment, penalties, and punitive damages, a final determination on the amount of penalties and punitive damages shall be made in an administrative hearing pursuant to the provisions of the Illinois Administrative Procedure Act [5 ILCS 100] and 56 Ill. Adm. Code 120.~~

~~(Source: Amended at 25 Ill. Reg. 869, effective January 1, 2001)~~