

UNDERSTANDING ILLINOIS' MINIMUM WAGE LAW AND OTHER WAGE-RELATED STATUTES

I. MINIMUM WAGE LAW

A. Public Act 101-0001 (Lifting up Illinois Working Families Act)

1. Signed into Law: February 19, 2019
2. Effective Date: February 19, 2019
3. Amends: Illinois Administrative Procedure Act (emergency rulemaking), Illinois Income Tax Act (employer credits against payments for deductions and withholdings for employers with 50 or fewer full-time equivalent employees), and the Minimum Wage Law (see below).

B. Minimum Wage Increases

1. Expires the current minimum wage for employees who are 18 years of age or older (\$8.25 per hour) on December 31, 2019.
2. Introduces graduated wage increases for employees who are 18 years of age or older:
 - a. January 1, 2020–June 30, 2020: \$9.25 per hour
 - b. July 1, 2020–December 31, 2020: \$10.00 per hour
 - c. January 1, 2021–December 31, 2021: \$11.00 per hour
 - d. January 1, 2022–December 31, 2022: \$12.00 per hour
 - e. January 1, 2023–December 31, 2023: \$13.00 per hour
 - f. January 1, 2024–December 31, 2024: \$14.00 per hour
 - g. Effective January 1, 2025: \$15.00 per hour
3. Expires the current maximum wage for employees who are under 18 years of age (no more than 50 cents less than the wage required to be paid to employees who are at least 18 years of age) on December 31, 2019.
4. Introduces new wage requirements for employees who are under 18 years of age effective January 1, 2020.

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- a. If the employee is under 18 years of age and has worked more than 650 hours for the employer during any calendar year, he/she may not be paid less than the wage required for employees who are 18 years of age or older.
- b. If the employee is under 18 years of age and has not worked more than 650 hours for the employer during any calendar year, he/she is entitled to the following minimum wage:
 - i. January 1, 2020–December 31, 2020: \$8.00 per hour
 - ii. January 1, 2021–December 31, 2021: \$8.50 per hour
 - iii. January 1, 2022 –December 31, 2022: \$9.25 per hour
 - iv. January 1, 2023–December 31, 2023: \$10.50 per hour
 - v. January 1, 2024–December 31, 2024: \$12.00 per hour
 - vi. Effective January 1, 2025: \$13.00 per hour.

C. Wage Audits and Recordkeeping Requirements

- 1. Random Compliance Audits: Under the Lifting Up Illinois Working Families Act, the Director of the Department of Labor and his authorized representatives now have the authority to make random audits of employers in any industry to determine compliance.
- 2. Recordkeeping Requirements: As a reminder, every employer shall make and keep for a period of not less than 3 years, true and accurate records of the following:
 - a. The name, address and occupation of each of its employees;
 - b. Each employee's rate of pay;
 - c. The amount paid each pay period to each employee;
 - d. The hours worked each day in each work week by each employee; and
 - e. Any other information prescribed by regulation as necessary or appropriate for the enforcement of the Minimum Wage Law or its regulations.
- 3. Penalties: The Lifting Up Illinois Working Families Act creates and enhances penalties for violating the Minimum Wage Law.
 - a. New Penalty for Failed Recordkeeping: Any employer who fails to keep payroll records as required by the Minimum Wage Law will be assessed a penalty of \$100 per impacted employee.

- i. Previously, there was no financial penalty (just a Class B misdemeanor).
 - ii. Although the \$100 penalty per impacted employee only applies to failed recordkeeping, the Class B misdemeanor penalty extends to refusing to admit the Director to any place of employment, failing to furnish records to the Director, and falsifying such records, among offenses listed in Section 11(a) of the Minimum Wage Law.
- b. Increased Penalty for Underpayments: If an employee suffers an underpayment, he/she may recover **triple** the amount of any such underpayments in a civil action, together with costs and reasonable attorney's fees, as well as damages of **5%** (up from 2%) of the amount of any such underpayments for each month following the date of payment during which such underpayments remain unpaid.
- c. Increased Penalty for Willful, Repeated, or Reckless Underpayments: Employers shall be liable to the Department of Labor for up to 20% of the employee's underpayment where the employer's conduct is proven by a preponderance of the evidence to be willful, repeated, or with reckless disregard of the Minimum Wage Law or any rule adopted under the Law (unchanged by the Lifting Up Illinois Working Families Act).
 - i. Employers will also be liable to the Department of Labor for an additional **\$1,500 penalty**.
 - ii. Employers will also be liable to the employee for damages in the amount of **5%** (up from 2%) of the amount of any such underpayments for each month following the date of payment during which such underpayments remain unpaid.*

*If an employee collects damages of 5% of the underpayment due to an action brought by the Department of Labor, he/she may not also collect those damages in a private action for the same violation (and vice versa).

D. Best Practices to Avoid Liability

- 1. Keep accurate time records for all employees.
- 2. Ensure that employees under the age of 18 who have worked 650 hours or more are paid minimum wage for employee 18 years of age or older.
- 3. Annually review budgets, which should take into account the graduated increases in minimum wage over the next several years.
- 4. Train specific employees (e.g., accounting and human resources employees) in recordkeeping requirements under the Act, and reinforce the penalties for violating the Minimum Wage Law.

5. Train appropriate management employees in how to respond to compliance audits and Department of Labor information requests.

II. GOVERNMENT SEVERANCE PAY ACT

A. Public Act 100-0895 (Government Severance Pay Act)

1. Signed into Law: August 14, 2018
2. Effective: January 1, 2019
3. Applicable To: Units of government

This includes units of local government, school districts, community colleges, certain boards of four-year public universities, and all boards, commissions, agencies, institutions, authorities, and bodies politic and corporate of the State, created by or in accordance with the constitution or statute, of the executive branch of State government.

B. Severance Pay Provisions

1. The Act applies when a unit of government enters into a contract or employment agreement OR renews or renegotiates an existing contract or employment agreement with an officer, agent, employee, or contractor which contains a provision for severance pay.
2. "Severance Pay" is defined as "actual or constructive compensation, including salary, benefits, or perquisites, for employment services yet to be rendered which is provided to an employee who has recently been or is about to be terminated."
3. If the contract or employment agreement contains a provision for severance pay, it must also include the following provisions:
 - a. A requirement that severance pay may not exceed an amount greater than 20 weeks of compensation; and
 - b. A provision that severance pay is prohibited when the officer, agent, employee, or contractor has been fired for misconduct, as broadly defined in the Act.

C. Public Act 101-0195 (Athletics Exception)

1. Signed into Law: August 2, 2019
2. Effective: August 2, 2019
3. Athletics Exception: Public Act 100-0195 amends the Government Severance Pay Act so that it does not apply to contracts or employment agreements for individuals employed by the department of intercollegiate athletics of a college or university when the employee's compensation is

funded by non-State-appropriated funds (such as revenues generated by athletic events or activities, gifts or donations, or any combination thereof).*

*This does not mean that such individuals are entitled to severance pay when dismissed for misconduct.

III. ILLINOIS WAGE PAYMENT AND COLLECTION ACT

A. Public Act 100-1094 (Reimbursement of Employee Expenses)

1. Signed into Law: August 26, 2018
2. Effective: January 1, 2019

B. Reimbursement of Employee Expenses

1. Employers are now required to reimburse employees for all necessary expenditures and losses which are (i) incurred within the scope of employment, and (ii) directly related to services performed by the employer.
2. What are “necessary expenditures and losses”?
 - a. All reasonable expenditures or losses required of the employee in the discharge of employment duties; and
 - b. Which primarily benefit the employer.
3. What is the deadline for reimbursement, and what must employees submit?
 - a. Employees have 30 calendar days (or more, per a written expense reimbursement policy) from the date of the expenditure or loss to submit a request for reimbursement and supporting documentation.
 - b. Employees must submit supporting documentation OR a signed statement that supporting documentation is non-existent/missing.
4. Are there any exceptions?
 - a. Employees cannot be reimbursed for losses due to their own negligence, normal wear, and losses due to theft (unless the theft is the result of the employer’s negligence).
 - b. Employees must comply with an employer’s written expense policy in order to receive reimbursement.*

*However, employers cannot establish a policy of zero or *de minimus* reimbursement.

- c. Employers are not required to reimburse employees unless the employer has authorized or required the employee to incur the necessary expenditure or the employer failed to comply with its written expense reimbursement policy.

IV. EQUAL PAY ACT

A. Public Act 101-0177 (Salary History and Wage Discrimination)

1. Signed into Law: July 31, 2019
2. Effective: September 29, 2019 (60 days after becoming law)

B. Salary History Inquiries

1. Under the amended Act, employers cannot:
 - a. Screen job applicants based upon their current or prior wages or salary histories (including benefits or other compensation) by requiring that an applicant satisfy minimum or maximum wage/salary history criteria.
 - b. Request or require a wage or salary history as a condition of:
 - i. Being considered for employment;
 - ii. Being interviewed;
 - iii. Continuing to be considered for an offer of employment;
 - iv. An offer of employment; or
 - v. An offer of compensation.
 - c. Request or require that an applicant disclose wage or salary history as a condition of employment.
 - d. Seek a job applicant's wage or salary history (including benefits or other compensation) from any current or former employer.

However, this prohibition does not apply if:

- i. The job applicant's wage or salary history is a matter of public record; or
 - ii. The job applicant is a current employee and is applying for a position with the same current employer.
2. These prohibitions are not meant to prevent an employer from providing information about the wages, benefits, compensation, or salary offered in relation to a position or engaging in discussions with a job applicant regarding wages, salary, benefits, and other compensation.
3. Job applicants may voluntarily disclose their current or prior wage or salary history (including benefits or other compensation) without causing the employer to violate the Act.

However, employers may not consider or rely on the voluntary disclosures as a factor in determining:

- a. Whether to offer a job applicant employment;
 - b. In making an offer of compensation; or
 - c. In determining future wages, salary, benefits, or other compensation.
4. If an employer violates these requirements, the employer is subject to a civil penalty not to exceed \$5,000 for each violation for each affected employee and the employee may recover in a civil action:
- a. Any damages incurred;
 - b. Special damages not to exceed \$10,000;
 - c. If special damages are available, compensatory damages (to the extent such damages exceed the amount of special damages);
 - d. Injunctive relief as may be appropriate; and
 - e. Costs and reasonable attorney's fees.

C. Disclosing Wage and Benefits Information

1. Under the amended Act, employers cannot require employees to sign a contract or waiver prohibiting them from disclosing or discussing information about their wages, salary, benefits, or other compensation.
2. There is an exception for human resources employees, supervisors, or any other employee whose job requires or allows access to other employees' wage or salary information from disclosing that information without prior written consent.

D. Expanded Protections for Wage Discrimination

1. The Act previously prohibited wage discrimination on the basis of sex (and against African-Americans) where employees were performing substantially similar work on jobs that required "**equal skill.**"
2. The amendment changes this language to prohibit wage discrimination on the basis of sex where employees are performing substantially similar work on jobs that require "**substantially similar skill.**"
3. If an employee is paid less than the wage to which he/she is entitled, he/she may recover the entire amount of the underpayment (with interest), as well as:

- a. Compensatory damages if the employee demonstrates that the employer acted with malice or reckless indifference;
- b. Punitive damages as may be appropriate;
- c. Injunctive relief as may be appropriate; and
- d. Costs and reasonable attorney's fees.

Prior to the amendment, employees were not entitled to compensatory damages, punitive damages, or injunctive relief.

E. Best Practices to Avoid Liability

- 1. Employers should train their hiring committees and supervisors/managers to ensure compliance with the amendments to the Equal Pay Act.
- 2. Employers should review current hiring policies and procedures to ensure compliance with the amendments to the Equal Pay Act.

V. MINIMUM TEACHER SALARY

A. Legislative History

- 1. On May 30, 2018, minimum teacher salary legislation passed both houses.
- 2. On June 28, 2018, former Governor Rauner vetoed the bill. The vetoed bill went to both houses, but the total veto stood.

B. House Bill 2078

- 1. Introduced: February 5, 2019
- 2. Bill Status: Sent to the Governor for signature on June 28, 2019
- 3. Minimum Teacher Salary: School boards must pay full-time teachers no less than the following:
 - a. 2020-2021 School Year: \$32,076
 - b. 2021-2022 School Year: \$34,576
 - c. 2022-2023 School Year: \$37,076
 - d. 2023-2024 School Year: \$40,000
 - e. Subsequent School Years: The minimum salary rate for the previous school year increased by a percentage equal to the percentage increase, if any, in the Consumer Price Index for All Urban Consumers.