THE ILLINOIS
MANUFACTURER
SECOND QUARTER 2023

2023 MAKERS MADNESS:
"THE COOLEST THING MADE IN ILLINOIS"
INGERSOLL MACHINE TOOLS' ROSENBERG MOON HABITAT

MANUFACTURER OBLIGATIONS UNDER THE AMENDED ONE DAY REST IN SEVEN ACT

GREENSFELDER, HEMKER & GALE, P.C.

State of Illinois
Department of Labor

Your Rights Under Illinois Employment Laws

Wage Increases Schedule

Effective Jan. 1, 2023	$13.00
Effective Jan. 1, 2024	$14.00
Effective Jan. 1, 2025	$15.00

Minimum Wage $13.00 per hour (Effective Jan. 1, 2023) and Overtime Hotline: 1-800-478-3998

- **Coverage:** Applies to employers with 4 or more employees. Domestic workers are covered even if the employer only has 1 worker. Certain workers are not covered by the Minimum Wage Law and some workers may be paid less than the minimum wage under limited conditions. For more information, visit our website. (See wage increases schedule above.)
- **Tipped Employees:** Must be paid at least 60% of the applicable minimum wage. If an employee's tips combined with the wages from the employer do not equal the minimum wage, the employer must make up the difference.
- **Overtime:** Most hourly employees and some salaried employees are covered by the overtime law and must be compensated at time and one-half of their regular pay for hours worked over 40 in a workweek.

Unpaid Wages Hotline: 1-312-793-2808

Wage Payment and Collection Act

- Employees must receive their final compensation, including earned wages, vacation pay, commissions and bonuses on their next regularly scheduled payday.
- Unauthorized deductions from paychecks are not allowed except as specified by law.
- Employers must reimburse employees for all necessary expenditures or losses incurred by an employee during the scope of employment and related to services performed for the employer. Employee must submit reimbursement request within 30 calendar days unless an employer policy allows for additional time to submit.

Meal and Rest Periods Hotline: 1-312-793-2804

One Day Rest in Seven Act

- Provides employees with 24 consecutive hours of rest within every seven (7) consecutive day period.
- Employers may obtain permits from the Department allowing employees to voluntarily work seven consecutive days.
- Employees working 7 ½ continuous hours must be allowed a meal period of at least 20 minutes no later than 5 hours after the start of work, and an additional 20 minutes if working a 12 hour shift or longer.
- Employees must be afforded reasonable bathroom breaks.

Equal Pay Act Hotline: 1-866-372-4365

- Requires employers to pay equal wages to men and women doing the same or substantially similar work, unless such wage differences are based upon a seniority system, a merit system, or factors other than gender.
- Employers and employment agencies are banned from asking applicants past wage and compensation histories.
- Employees may disclose or discuss their own salaries, benefits, and other compensation with their co-workers and colleagues.
- Employers are not allowed to pay less to African American employees versus a non-African American employees.
- Certain employees at large businesses may request wage/salary history for their job title from IDOL.

Violent Crime Victims' Leave Hotline: 1-866-372-4365

Provides employees who are victims of domestic, gender, or sexual violence, or other crimes of violence, or who have family members who are victims with up to 12 weeks of unpaid leave during a 12-month period.

Child Labor Hotline: 1-800-645-5784

Workers under Age 16

- Children under the age of 14 may not work in most jobs, except under limited conditions.
- 14 and 15-year-olds may work if the following requirements are met:
  - Employment certificates have been issued by the school district and filed with the Department of Labor confirming that a minor is old enough to work, physically capable to perform the job, and that the job will not interfere with the minor's education;
  - The work is not deemed a hazardous occupation (a full listing can be found on our website);
  - Work is limited to 3 hours per day on school days, 8 hours per day on non-school days and no more than 6 days or 48 hours per week;
  - Work is performed only between the hours of 7 a.m. to 7 p.m. during the school year (7 a.m. to 9 p.m. June through September); and
  - A 30-minute meal period is provided no later than the fifth hour of work.

This is a summary of laws that satisfies Illinois Department of Labor posting requirements. For a complete text of the laws, visit our website at:

www.labor.illinois.gov

For more information or to file a complaint, contact us at: **524 South 2nd St, Suite 400, Springfield, IL 62701 • Springfield 217-782-6206**
160 N. LaSalle, St, Suite C-1300, Chicago, IL 60601 • Chicago 312-793-2800 • Marion 618-993-7090

THIS POSTER MUST BE DISPLAYED WHERE EMPLOYEES CAN EASILY SEE IT.

On January 1, 2023, amendments to the One Day Rest in Seven Act ("ODRISA") took effect. These changes impact all Illinois manufacturers and are set forth below.

New Rest Days

Prior to January 1, 2023, the ODRISA required manufacturers to provide employees with at least 24 consecutive hours of rest in every "calendar week," defined as 12:01 a.m. Sunday to midnight the following Saturday.

Effective January 1, 2023, the phrase "calendar week" and its corresponding definition have been replaced with the phrase "every seven consecutive day period." The ODRISA now requires manufacturers to provide their non-exempt employees with a minimum of 24 consecutive hours of rest in every consecutive seven-day period, regardless of where these days fall within the calendar week. For example, if an employee is scheduled to be off on Tuesday and works Wednesday through Monday, the employee must have that following Tuesday off because to work Wednesday through Tuesday is considered seven consecutive days. This is a rolling consecutive seven-day period; it does not reset after each consecutive seven-day period.

The new 24 consecutive hours of rest in every consecutive seven-day period does not apply to:

1. employees for whom work hours, day of work, and rest periods are governed by a collective bargaining agreement;

2. salaried employees who are classified (properly) as exempt (i.e., not eligible for overtime) under the Fair Labor Standards Act ("FLSA"); or

3. individuals employed as "supervisors" as defined in Section 2(11) of the National Labor Relations Act ("NLRA"). Section 2(11) of the NLRA defines supervisors as "Any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action."

What remains unchanged under the ODRISA is a manufacturer's obligation to apply for and secure a permit prior to any employee working on the seventh day. A permit is required even if the employee voluntarily chooses to work on the seventh day. Importantly, as part of the permit application, manufacturers must certify that all employees who work on the seventh day are in fact doing so voluntarily. Note, under the ODRISA, no permit is required if the employees are needed in the event of a breakdown of machinery or equipment (or any other type of emergency requiring immediate services of experienced labor to prevent injury to persons, damage to property, or suspension of necessary operation).

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New Meal Breaks

The ODRISA requires manufacturers to provide non-exempt employees who work 7.5 continuous hours or longer with a meal period (paid or unpaid) of at least 20 minutes, no later than five hours after the start of the employee's shift. On top of this, effective January 1, 2023, manufacturers are now required to provide an additional 20-minute meal period (paid or unpaid) to employees who work a 12-hour shift or longer. Manufacturers must also provide these employees with reasonable bathroom breaks that cannot be counted toward this additional meal break. Thus, for example, for an employee who is scheduled to work from 8 a.m. to 8 p.m., the manufacturer must allow the employee to take the first meal break of at least 20 minutes on or before 1 p.m. and the second meal break of at least 20 minutes before 6 p.m.

Several questions have arisen regarding the new additional 20-minute meal break requirement. First, are manufacturers required to provide the additional 20-minute meal break if the employee is scheduled to work a 12-hour shift, but does not actually work the full 12-hour shift? For example, at hour 9 of 12, the manufacturer tells the employee that he is no longer needed and can leave, and the employee does in fact leave at hour 9, prior to receiving the additional 20-minute meal period. In this scenario, the amended ODRISA does not require the manufacturer to provide the employee with the additional 20-minute meal break after hour 7.5, because the employee did not work a full 12-hour shift. The amended ODRISA instructs, "An employee who works in excess of 7 1/2 continuous hours shall be entitled to an additional 20-minute meal period for every additional 4 1/2 continuous hours worked." In the example above, the employee did not work the additional 4.5 continuous hours needed to trigger the manufacturer's obligation.

Second, are manufacturers permitted to provide the employee with two 10-minute meal breaks, in lieu of the additional 20-minute meal break? The Illinois Department of Labor ("IDOL") addressed this question in written guidance issued on January 1, 2023, stating: "If an employee voluntarily agrees to two 10-minute break intervals in lieu of the second break, the Department would not view that as a violation. However, if an employee seeks to take the second 20-minute break all at once, the Employer must honor that request." Thus, manufacturers must first offer the employee the full additional meal break of at least 20-minutes; if the employee voluntarily requests and/or proposes to split the additional 20-minute meal break into two 10-minute meal breaks, then the manufacturer will be permitted to legally do so without violating the ODRISA. Based on the new enhanced penalties for non-compliance, manufacturers should document that they in fact offered the employee the full 20-minute additional meal break, and the employee voluntarily requested and/or proposed to split the 20-minute meal break into two 10-minute meal breaks and have the employee attest to this fact.

Third, are manufacturers required to provide the additional 20-minute meal period to salaried/exempt employees, or to employees whose hours and meal breaks are established and governed under a collective bargaining agreement? The amended ODRISA and IDOL written guidance confirm that manufacturers are not required to provide either classification of employee with the additional 20-minute meal period if that classification of employee works 12 continuous hours.

Fourth, does the amended ODRISA prohibit a manufacturer from requiring an employee to work through any required meal break or forcing an employee to take the meal break? In its FAQs, the IDOL answered as follows: "An employer may not force an employee to work through a meal break or force an employee to take a meal break … if an employee works through a meal break, they must be paid." If an employee voluntarily chooses to work through a meal break, because of the new enhanced penalties for non-compliance, manufacturers should document this fact and have time/pay records confirming that the employee was paid for working through the meal break(s).

New Posting Requirement

On January 1, 2023, the IDOL issued an updated "Your Rights Under Illinois Employment Laws" poster that summarizes, among other things, the ODRISA amendments. A link to the poster is on the IDOL webpage, and the IDOL offers the poster in English, Spanish and Polish. The ODRISA requires manufacturers to "post and keep posted" the poster in one or more conspicuous spaces where other similar posters are customarily displayed. For employees who work remotely or travel, manufacturers are required to provide the notice via email or on a website "regularly used by the employer to communicate work-related information, that all employees are able to regularly access, freely and without interference."

New Enhanced Penalties for Non-Compliance

Prior to January 1, 2023, if a manufacturer failed to comply with any requirements under the ODRISA, the manufacturer would be assessed a fine for each offense of not less than $25 and not more than $100, regardless of how many employees the manufacturer employed at the time of the offense.

Effective January 1, 2023, the amended ODRISA adds more teeth for non-compliance in the forms of enhanced fines and damages. Manufacturers with fewer than 25 employees are subject to damages payable to the employee of up to $250 per offense, and a penalty payable to the IDOL of up to $250 per employee, per offense. Manufacturers with 25 or more employees are subject to damages payable to the employee of up to $500 per offense, and a penalty payable to the IDOL of up to $500 per employee, per offense. A manufacturer's violation of the posting requirement constitutes a single offense and subjects the manufacturer to a $250 fine. Each day a meal break is not provided to an employee, and each instance in which 24 hours off within seven consecutive days is not provided to an employee, constitute a separate offense per employee.

Manufacturers should review their meal break scheduling policies and practices to ensure they comply with the amended ODRISA. Additionally, manufacturers should adjust work and/or production schedules to ensure that employees are provided a minimum of 24 consecutive hours of rest in every consecutive seven-day period, regardless of where these days fall within the calendar week. Compliance is key now, as the new enhanced penalties can add up quickly and significantly.◆