

## RETALIATION

It is a violation of the ECA for an employer to retaliate by discharge or in any other manner against any person for exercising their rights under the law.

Those rights include:

- (1) Making a complaint to an employer, to a co-worker, to a community organization, before a public hearing, or to a state or federal agency that rights guaranteed under the ECA have been violated;
- (2) Causing to be instituted any proceeding under or related to the ECA; or
- (3) Testifying or preparing to testify in an investigation or proceeding under the ECA.

An individual who has been retaliated against can file a complaint with IDOL or with the Court. If the claim is successful, a worker may recover all legal or equitable relief as an ALJ or a Court may deem appropriate.

## CONTACT US

For any questions regarding the information in this brochure, or want more information about your rights as a worker, contact us via phone or visit our website:

[www.raisetheflooralliance.org](http://www.raisetheflooralliance.org)

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FLOOR

# KNOW YOUR RIGHTS

THE ILLINOIS  
EMPLOYEE  
CLASSIFICATION  
ACT  
(ECA)



# KNOW YOUR RIGHTS

## EMPLOYEE CLASSIFICATION ACT

### WHAT IS THE PURPOSE OF THE ECA?

The Illinois legislature wanted to address the practice of employers misclassifying employees as independent contractors in the construction industry.

### WHO IS COVERED?

- ❖ Any individual who performs services for a contractor in the construction industry
- ❖ Under the ECA, "Construction" includes, but is not limited to:
  - Altering      Repairing
  - Renovating    Landscaping
  - Painting      Demolishing
  - Moving construction materials to and from job sites
- ❖ Under the ECA, "Contractor" means "any individual, sole proprietor, partnership, firm, corporation, limited liability company, association, or other legal entity permitted by law to do business within the State of Illinois who engages in construction."

## EMPLOYEE VS. INDEPENDENT CONTRACTOR TEST

For workers in the construction industry, the ECA deems individuals who perform services for a contractor to be employees and thus, eligible for all the benefits of being an employee, such as a right to minimum wages, overtime wages, and earned wages.

An employer bears the burden of proving that an employee is actually an independent contractor. There are three factors an employer must prove:

- (1) The individual has been and will continue to be free from control or direction over the performance of the service for the contractor, both under the individual's contract of service and in fact;
- (2) The service performed by the individual is outside the usual course of services performed by the contractor; and
- (3) The individual is engaged in an independently established trade, occupation, profession, or business.

An employer can also prove a worker is a sole proprietor or partnership performing services for the contractor as a sub-contractor if it can meet all 12 factors.

## WHAT IF I HAVE BEEN MISCLASSIFIED?

If you have been misclassified as an independent contractor and you have worked in the construction industry, you have two options:

- ❖ **File a complaint with the Illinois Department of Labor (IDOL)**
  - A worker has 1 year from the last date of the violation to file a complaint with IDOL.
  - IDOL will conduct an investigation of the employer and if they find there is an ECA violation, then it will be sent to an Administrative Law Judge for a hearing.
- ❖ **File a lawsuit**
  - A worker has 3 years from the last date of employment to bring a lawsuit in state court.
  - A worker can recover:
    - The amount of any wages, salary, employment benefits, or other compensation denied or lost due to the violation, PLUS an equal amount in liquidated damages;
    - Compensatory damages and up to \$500 for each violation of the ECA; and
    - Attorneys' fees and costs.