

Illinois Joins Growing List of States Addressing Employee Business Expense Reimbursement

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Related Services

Wage and Hour

An amendment to the Illinois Wage Payment and Collection Act (IWPCA) imposing an affirmative duty on employers to reimburse employees for certain expenses incurred during their employment will go into effect on January 1, 2019.

Previous Law

Prior to the amendment, expense reimbursements were not addressed in the IWPCA and its regulations. As a result, employers reasonably took the position that expense reimbursements were not “wages” and thus were not covered by the IWPCA. An employee claiming he or she was not properly reimbursed would have to characterize it as a breach-of-contract claim. Such a claim would not include the potential recovery of liquidated damages and attorney’s fees, as are available under the IWPCA. That position is no longer tenable.

New Law

The amended law (820 ILCS 115/9.5) requires employers to reimburse all “necessary expenditures ... incurred by the employee within the employee’s scope of employment and directly related to services performed by the employer.” It defines “necessary expenditures” to mean “all reasonable expenditures ... required of the employee in the discharge of employment duties and that inure to the primary benefit of the employer.”

Generally, however, the employee need not be reimbursed if the employee fails to comply with the employer’s written expense-reimbursement policy. The employer’s written expense-reimbursement policy may not require employees to submit expenses less than 30 days after incurring them, although it may allow employees *more* than 30 days to submit expenses. The employer must reimburse all “necessary” expenses that are submitted within 30 days after they were incurred.

The policy may not strictly require a receipt or other supporting documents. If an employee has lost or otherwise cannot produce a receipt or other documentation, the employer must accept the employee’s own “signed statement” instead.

In addition, while the employer’s policy may set specifications or guidelines for expenditures, and the employer may deny reimbursement if these guidelines are exceeded, the policy may not provide for “*de minimis*” reimbursement or no reimbursement at all.

Further, if the employer “authorized” or “required” a particular expenditure (those two terms are undefined in the amendment), it may not deny reimbursement, even if the type or amount of the expenditure otherwise would violate or exceed the employer’s policy.

Other States

Illinois has joined a number of other states (*e.g.*, California, Massachusetts, and Montana) in enacting expense-reimbursement statutory or regulatory provisions or addressing expense

reimbursement obligations through agency guidance.

California's expense-reimbursement statute has been particularly troublesome for employers. Class-action litigation premised on failure to reimburse certain expenses (such as home internet service for telecommuters and smartphone expenses) has been brought based on the California law. In one case, a California Court of Appeal held the expense-reimbursement statute requires employers to pay a reasonable percentage of employees' personal cellphone bills when such phones are used, in part, for business purposes. *Cochran v. Schwan's Home Serv., Inc.*, 228 Cal. App. 4th 1137 (Cal. Ct. App.), *reviewed denied*, 2014 Cal. LEXIS 10933 (Cal. 2014). However, unlike the amendment to the IWPCA, the California law does not have a provision enabling employers to maintain some control over the parameters of expense reimbursements through implementation of a written reimbursement policy.

Takeaway

Employers in Illinois and other states with expense-reimbursement laws or regulations should ensure they create and implement written policies to address issues such as the types of expenses that will be reimbursed and any dollar limits on such expenses under normal circumstances.

Please contact the Jackson Lewis attorney(s) with whom you regularly work with any questions about the new Illinois law and any other wage and hour issues.

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