

New Illinois Law Requiring Vehicle Expense Reimbursement Impacts All Transportation Employers

Amundsen Davis Transportation Alert

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Effective January 1, 2019, the Illinois Wage Payment and Collection Act requires employers to reimburse "necessary expenditures or losses incurred by the employee within the employee's scope of employment and directly related to services performed for the employer."

Here's what this means...

Expenses related to vehicle usage, that primarily benefits the employer, must be reimbursed. While the law requires reimbursement of expenses which are for the primary benefit of the employer, employers are not responsible for expenses due to (i) the employee's negligence, (ii) normal wear and tear, or (iii) theft (unless the theft was the result of the employer's negligence).

Additionally, an employee is not entitled to reimbursement if he/she fails to comply with an established written expense reimbursement policy. The policy may set guidelines and specifications on what is reimbursable, as long as the reimbursement is not *de minimis* or nonexistent. But, if the employer authorizes or requires the employee to incur an expense, or fails to comply with its own policy, then the expense will become reimbursable. Under the law, employees must have at least 30 calendar days to submit supporting documentation, or a signed statement as to why such support is nonexistent, missing, or lost in order to be entitled to the reimbursement.

While the Illinois Department of Labor has not clarified what types of expenses are reimbursable, the statute closely tracks California's Labor Code 2802, which has been interpreted to require reimbursement for: personal vehicle use at the IRS rate or the actual costs if higher (in order to cover mileage and fuel); personal mobile phones and related service used for work (even where minimal); training; business travel; tools; equipment; and uniforms (including apparel and accessories of distinctive design and color). This list is not exhaustive, nor is it necessarily controlling on Illinois employers.

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Of course, non-compliance has harsh consequences for employers. Illinois law provides for the recovery of attorney fees and costs incurred in pursuing relief through the courts, allows for penalties, fines and criminal prosecution by the State of Illinois, and also provides for a 2% per month interest rate to accrue on unpaid expenses. In light of a 10-year statute of limitations period, the interest alone could be crippling.

What to do? Establish and Enforce Written Policies

Review existing policies and procedures:

- How, when, and where do employees submit receipts?
- Are there limits to the reimbursements?
- How do you ensure that precise vehicle related expenses are reimbursed; particularly in light of gasoline rates continuing to increase in Illinois?
- Is the policy something that the company can and does effectively, fairly, and consistently apply?

Employers should consider having competent employment counsel review expense policies and ancillary documents for compliance and best practices. For example, update template release agreements to acknowledge that an employee received complete expense reimbursements.

WHAT ABOUT OWNER OPERATORS? The new law does not apply to bona fide independent contractors. However, the test under the Illinois Wage Payment and Collection Act is difficult on businesses to demonstrate that the individual performing services is truly independent. While there is no "magic pill" on this front, it is still a best practice to engage anyone performing services for remuneration as a 1099-contractor on the condition that the individual is conducting his or her business as a bona fide Corporation or Limited Liability Company.

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