

Expense Reimbursements – Time to Update Policies

Labor & Employment Law Update

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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 you need to know now to prepare

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, or (iii) theft (unless the theft was the result of the employer’s negligence). Employees have at least 30 calendar days to submit supporting documentation, or a signed statement as to why such support is nonexistent, missing, or lost.

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 it is not *de minimus* 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 may become reimbursable.

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 automobile use at the IRS rate or the actual costs if higher; personal mobile phones and 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. Both states’ laws provide for attorney fee shifting and penalties for violations.

What to do? Spoiler alert – Enforce written policies

Review existing policies and procedures:

- How, when, and where do employees submit receipts?
- Are there limits on reasonable meal reimbursements?

- What about class of travel for domestic vs. international flights?
- Are these policies that the company can and does effectively, fairly, and consistently apply?

As BYOD (Bring Your Own Device) policies become more prevalent, employers must evaluate whether they are required to reimburse for the cost of all or a portion of the device (mobile phone, tablet, computer) and related voice, data, and internet services. Similarly, consider educational and business development expenses which are primarily for the employer's benefit such as trade and industry subscriptions and memberships. Also address expenses currently incurred without forethought: e.g., curbing practices where employees purchase office supplies as they deem necessary.

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.

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