

# Recent Amendments To Illinois Wage Payment And Collection Act Regulations Address Employer Expense Reimbursements

## Labor & Employment Law Update

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Last month, the Illinois Department of Labor (“IDOL”) fairly quietly released amended regulations affecting the interpretation and enforcement of the Illinois Wage Payment and Collection Act (“IWPCA”). A complete listing of the amendments appears on the Illinois Secretary of State website. (starting at p.5406).

Most notably, the amended regulations address the issue of reimbursable expenses. Specifically, in 56 Ill. Adm. Code 300.540(a), the new regulation lays out five factors to be used to determine whether an expense is “to the primary benefit of the employer”—and ultimately notes that no single one of the five factors is dispositive because the overall analysis “should focus on the extent to which the expense benefits the employer and its business and business model.” The five factors are these:

1. Whether the employee has any expectation of reimbursement;
2. Whether the expense is required or necessary to perform the employee’s job duties;
3. Whether the employer is receiving a value that it would otherwise need to pay for;
4. How long the employer is receiving the benefit; and
5. Whether the expense is required of the job.

The regulations go on, in Section 300.540(b), to state among other things that if an employer does not respond to an employee’s request for reimbursement, the non-response shall be considered a denial of the request that is ripe for an IWPCA claim against the employer. The regulations do not, however, specify how long a request for reimbursement must go unanswered in order to convert the non-response into an actionable reimbursement denial.

Beyond that, Section 300.540(c) sets certain recordkeeping requirements for reimbursement policy documents and documents regarding employee reimbursement requests, employer decisions on those requests, and actual reimbursement payments made. And Section 300.540(d) establishes that if an employer, by direct authorization or practice, provides reimbursements greater than what is allowed by the employer's written reimbursement policy, the employer is liable for full reimbursement of such expenses. It remains to be seen how broadly courts, and the IDOL, will construe this provision—but employers are well-advised to ensure that written reimbursement policies are carefully constructed and followed.

Ultimately, these new regulations invite nearly as many questions as they answer, and it remains to be seen how courts and the IDOL will respond. Until there is more clarity, employers should contact experienced labor and employment counsel for guidance on best practices for navigating these new regulations.

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