



New Expense Reimbursement Requirements In Illinois Leave Employers Guessing

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Any employer with employees who use their personal cell phones or home internet to do work should be aware of this new Illinois law. Although it has garnered little attention to date, the Illinois legislature has amended the Illinois Wage Payment and Collection Act (IWPCA) in a way that could result in significant new expenses for employers.

Effective January 1, 2019, the IWPCA requires employers to reimburse employees for all necessary expenditures that are within the employees' scope of employment and directly related to their services for their employers. Necessary expenses are defined as "reasonable expenditures or losses required of the employee in the discharge of employment duties and that inure to the primary benefit of the employer."

However, employees will not be entitled to reimbursement under the amended act if:

1. the employer has a written expense reimbursement policy and the employee fails to comply with it

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2. the employer did not authorize or require the employee to incur the expense
3. the expense exceeds the employer's guidelines (provided the guidelines do not provide for either no reimbursement or de minimis reimbursement)

The Illinois Department of Labor (IDOL) has not yet drafted interpretive regulations for the amendment and there is no case law yet.

Although there is no clear guidance on how the amended IWPCA will be interpreted and enforced, including in what situations employers will be required to provide reimbursements and in what amounts the reimbursements must be made, it is widely assumed that employers will be required to reimburse employees for a portion of their personal cell phone bills where employees are required or permitted to use such phones for business purposes. This could apply to other devices, such as tablets, notebooks, and pagers, as well, and employees' home internet costs could be included to the extent employees are required or permitted to use computers or personal devices through home internet. The amended act could also be interpreted to apply to other types of expenses, such as mileage related to travel between worksites.

In the absence of guidance on how the reimbursement requirement will be interpreted, some are turning to California law for guidance. California law similarly requires that employees be reimbursed for expenses, although California law differs from the new Illinois amendments in that it does not explicitly state that employers may have a reimbursement policy and deny reimbursement to employees who fail to adhere to the policy.

A review of California case law shows that employees have had valid claims for cell phone expense reimbursements where their employers required the use of personal cell phones for business purposes or, even if not explicitly required, were generally aware that employees were using their personal cell phones for business.

Conversely, reimbursement of employees' cell phone expenses was not required where employers could demonstrate that employees were not required or expected to use their personal cell phones for work. For example, employers that could establish that employees were not disciplined for failing to answer work calls on their personal phones and were not allowed to use their personal cell phones in the workplace established that personal cell phone use at work was merely for the employees' convenience and was not required or expected by the employers, and the employers had no duty to reimburse.

Illinois employers should consider amending their employment policies to address this amendment and to frame the circumstances under which they will reimburse for employee expenses, including but not limited to personal cell phones. Employers will want to clearly explain who is and who is not expected or allowed to use personal devices for work purposes, under what circumstances such work-related use will be allowed, and to what degree such expenses will be reimbursed.

Failure to comply with the amended IWPCA and to provide reimbursements required by law could result in costly class action lawsuits and/or enforcement actions from IDOL. The act's statute of limitations is ten years, and large plaintiff classes are common in lawsuits relating to the IWPCA, which could result in wide-ranging class action litigation.

