

Spare No Expense: With IWPCA Amendment, Illinois Joins Ledger of States Requiring Reimbursement of Employee Expenses



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Tuesday, October 30, 2018

Effective January 1, 2019, Illinois will join the handful of jurisdictions around the country that require employers to reimburse employees for expenses incurred in connection with employment. The requirement — which was signed into law by Governor Rauner on August 28, 2018, as an amendment to the Illinois Wage Payment and Collection Act (IWPCA) — governs when and how expenses must be reimbursed and serves to remind employers of the importance of having their own expense reimbursement policy.

For employers who keep an eye on decisions from California courts, the new requirement may be something else: a harbinger of consequences to come.

Under the new Illinois law, employers who “authoriz[e] or require[e]” employees to incur “necessary expenditures or losses” that are within the scope of the employee’s employment and are “directly related” to the services performed by the employee must reimburse the employees for the expenditure or loss incurred. Employees must submit supporting documentation for the expense within 30 days after incurring the expense, or provide a signed statement if supporting documentation is nonexistent, missing, or lost. For purposes of the law, “necessary expenditures” means “all reasonable expenditures or losses required of the employee in the discharge of the employment duties and that inure to the primary benefit of the employer.” The relief

available to employees for other IWPCA violations will be available to them for violations of this new provision.

The amendments, however, provide employers with some relief. Employees are not entitled to reimbursement under the new law if the employer has an established written expense reimbursement policy and the employee fails to comply with that policy. And, if an employee's expenditures exceed the employer's written specifications or guidelines, then the employer is not liable for the amount of the employee's expenditure that exceeds the policy specifications or guidelines, "so long as the employer does not institute a policy that provides for no reimbursement or de minimus reimbursement."

Although the new amendment will not take effect until the beginning of 2019, employers should consider reviewing their current expense reimbursement policies now to determine whether revisions, or an entirely new policy, are needed.

Unfortunately, even that review may not be the end of matters. Several years ago, California enacted a law with similar language to this recent IWPCA amendment. In the years since, California courts have found that the law of that state requires employers to reimburse employees for a number of expenses that may not be immediately apparent, such as data usage and Internet plan costs when employees use their own devices for work. Illinois courts may not take that same approach, but if California is any indication, the policy reviews and updates employers will need to do now will not be the last.

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