

Employers Need to Be Aware of Recent Amendments to the Illinois Expense Reimbursement Regulations

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As employers in Illinois should recall, having a written expense reimbursement policy is a best practice based on changes to the Illinois Wage Payment and Collection Act (IWPCA) that went into effect on January 1, 2019. The IWPCA requires employers to reimburse employees for “necessary expenditures and losses incurred by the employee within the employee’s scope of employment and directly related to services performed for the employer.” Under the IWPCA, necessary expenditures are defined to include reasonable expenditures which were incurred by the employee in the discharge of employment duties for “the primary benefit of the employer.” Employees are permitted to pursue claims for unpaid expenses much in the same way as they can pursue claims for unpaid wages, meaning that significant interest penalties and fees can be tacked on to a claim for an unreimbursed expense that an employer may be legally required to pay. After the enactment of the changes to the IWPCA, many employers had questions and concerns surrounding the ambiguity of the statute and, more importantly, what expenses would be deemed to primarily benefit the employer. These concerns are only heightened in hybrid work environments, in which employees may be working from home.

In a much anticipated update, the Illinois Department of Labor (IDOL) recently amended and significantly expanded its regulations governing employee expense reimbursements. The amended regulations provide a five-factor balancing test to determine whether the employee’s expenditure was made “to the primary benefit of the employer.” The five factors are:

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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.

Illinois employers still face many unanswered questions about thorny reimbursement issues, including expenses employees incur in a "work from home" scenario or by using a personal electronic device. IDOL's revised regulations do not resolve these ongoing concerns. From a practical perspective, the above-listed factors will cut both ways and not provide a clear answer as to many categories of expenses.

Further, the regulations were amended to include that an employer's non-response to an employee's request for reimbursement will be considered a denial of the request, which provides an employee the opportunity to file a claim against the employer.

In addition, IDOL regulations now require that employers maintain expense-related records for three years, including:

- All policies regarding reimbursement;
- All employee requests for reimbursement;
- Documentation showing approval or denial of reimbursement; and
- Documentation showing actual reimbursement and supporting documents.

While written policies can protect employees from unexpected claims, employers that cannot satisfy their recordkeeping obligations may not receive the benefit of these protections. In addition, based on the regulations, employees may be able to demonstrate that their expense requests that exceed a "cap" are valid if the employer previously deviated from its written policies.

Based on IDOL regulatory changes, employers should carefully review existing expense reimbursement practices and adopt written policies that align with their practices. Employers can and should require employees to submit reimbursement requests promptly and in writing. Some employers may need to begin documenting when certain expenses will not be reimbursed and explaining the reason for the denial. Managers and supervisors should be trained on the applicable policy and instructed that the policy should

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be administered as written. Class action disputes over business expenses currently are not common in Illinois, but Illinois law could make it prohibitively costly for an employer to defend against expense reimbursement claims.

Laner Muchin attorneys can assist in preparing policies and providing training to reduce the risk of a dispute.