



Tackling Employee Expense Reimbursements Under New Illinois Law

Insights

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Illinois employers are collecting receipts and preparing payments to comply with new [legislation](#) that requires employers to reimburse employees for business expenses incurred by the employee during the scope of employment. Specifically, employers are required to reimburse employees for all necessary expenditures and those expenses directly related to services performed for the employer. The Act defines “necessary expenditures” as all reasonable expenditures or losses required of the employee in the discharge of employment duties and that inure to the primary benefit of the employer.

One of the most common expenses incurred by employees relates to business use of a personal vehicle, which illustrates that the new legislation gives employers a lot to think about in regard to their reimbursement policies (or lack thereof) for the purposes of ensuring compliance with the law.

Road Trips

In regard to ground travel, many employees use their own vehicles to travel for business purposes. Employees will likely claim that many expenses are incurred by required business travel such as gas, insurance, repairs, and depreciation. With so many expenses associated with travel that are not easily quantifiable, how will employers determine the appropriate reimbursement for each expense? Fortunately for Illinois employers, the Illinois legislature modeled this new law after [California Labor Code Section 2802](#), which has been subject to court interpretation for many years.

West Coast Guidance

In [Gattuso v. Harte-Hank Shoppers](#), the California Supreme Court presented several reimbursement methods for traveling employees. Under the first method, the **Actual Expense** method, the employee calculates his or her actual expenses incurred as a result of business-related travel and submits the expense to the employer for reimbursement. However, as the court notes in *Gattuso*, this method is the most burdensome for the employer and the employee. This method may cause an administrative headache as it requires the employer to maintain detailed records about each employee’s expenses and ensure that such expenses that are difficult to calculate such as maintenance, insurance, and depreciation are submitted accurately. In regard to employees, this method requires employees to maintain detailed and accurate records of expenses, and to parse out automobile costs between personal and business use, which can be very difficult.

The second calculation method offered in *Gattuso* is the **Lump Sum** method. Under the lump sum method, employers can reimburse employees through a fixed lump sum payment for expenses based upon historical expense data. For automotive reimbursements, this is commonly provided as a gas stipend, daily per diem, or car allowance. Under this method, the employee is not required to determine the precise amount of expense incurred where employees will receive the lump sum, regardless of the actual cost of the expense. However, this method does not solve all the headaches from the Actual Expense method. If the employee establishes that the reimbursement is less than the expense incurred, the employer must make up the difference.

Under the **Enhanced Compensation** method, an employer may increase an employee's wages to cover the amount for expected business-related expenses incurred by the employee. However, the enhanced compensation method carries a similar risk as the lump sum method where the enhanced compensation does not fully reimburse the employee for expenses incurred, the employer will have to calculate the shortfall and reimburse the employee for the full expense. The enhanced compensation method can become particularly problematic for those employees eligible for overtime at their regular rate and/or whose pay is primarily commission based and varies month to month. When an employer increases an employee's commission percentage to cover expected expenses, the employee's commission may be more than the expenses incurred some months, and less than the expenses incurred in others.

Finally, the **Mileage Reimbursement** method is the most common method because it is the simplest. Under this method, employees are only required to track miles driven during the course of their business-related travel. Once the miles are submitted to the employer, the employer will reimburse the employee oftentimes based on the federal IRS mileage rate, which is commonly accepted and less likely to be scrutinized by courts. An employer may reimburse at a rate lower than the IRS rate if the employer is certain its predetermined rate actually compensates the employee for all expenses incurred. However, as discussed above, "actual expenses" when it comes to automobile travel is difficult to calculate. Furthermore, utilizing a rate lower than the IRS rate may incite claims from employees.

Handling Ancillary Travel Costs

Transportation expenses are not the only costs incurred with employee travel. Travel can bring additional ancillary expenses that are arguably reimbursable under the new Illinois law, such as lodging and meals. It is important for employers to remember that Illinois' new requirements do not give employees free reign to dine at the most expensive steak houses or stay at five star hotels. Employers are permitted to set per diem limits on meals and lodging, so that employees do not "run up the bill." Employers would be wise to set per diem limits or implement a pre-approval process before being presented with exorbitant receipts from an employee's business trip that might be entirely reimbursable in the absence of pre-set per diems or pre-approval processes.

The Bottom Line

The Illinois reimbursement law is barely one month old and its youth presents a lot of uncertainty

for employers. Fortunately, the Illinois legislature almost certainly looked at California's law for guidance in its drafting. We would therefore expect Illinois courts to do the same when litigation arises. Employers should not hesitate to create or re-evaluate reimbursement policies and procedures before it's too late.

Indeed, it would behoove employers **elsewhere** to remember that even without such a state law, the federal Fair Labor Standards Act and other wage-related laws might require some reimbursement depending on the circumstances. Moreover, while the easy solution to compliance might, at first blush, seem to be to over-reimburse, that is not without its own implications for employers **everywhere**. Proceed with caution to avoid compliance with one law overriding compliance with another.

Service Focus

Wage and Hour