

NEW IN 2019: ILLINOIS EMPLOYERS MUST REIMBURSE BUSINESS EXPENSES

Insights

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The new year brings new employee reimbursement obligations for Illinois employers. Effective January 1, 2019, the Illinois Wage Payment and Collection Act requires employers to reimburse employees for all necessary expenditures or losses incurred within the employee's scope of employment and 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.

The Act requires employees to submit all necessary reimbursement requests with appropriate supporting documentation within 30 days after incurring the expense, unless an employer's written reimbursement policy provides for additional time to submit a reimbursement request. If supporting documentation is nonexistent, missing, or lost, the employee shall submit a signed statement regarding any such receipts. Employers will not be required to reimburse employees for losses due to an employee's own negligence, normal wear, or losses due to theft unless the employer's negligence caused the theft.

ILLINOIS JOINS GROWING TREND, WITH ONE IMPORTANT DISTINCTION

Illinois now joins several other states—such as California, Iowa, and New Hampshire—that require employers to reimburse their employees for certain employment-related expenses. The Illinois law, however, contains one wrinkle that is not present in any of its sister statutes. The Illinois Wage Payment and Collection Act permits employers to

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maintain written expense reimbursement policies that reimburse employees for less than the full cost of the expenditure.

Specifically, the Act provides that an employer will not be liable for the portion of the expenditure amount that exceeds the specifications or guidelines of the employer's policy, so long as the policy does not provide for no reimbursement or a "de minimis" reimbursement. Put simply, employers may maintain policies that reimburse employees for less than 100 percent of the expenditure amount so long as the employer provides some reimbursement and the reimbursement is more than "de minimis."

PRACTICAL CONSIDERATIONS

The "de minimis" threshold is not defined by the statute and will be subject to court interpretation. Legal dictionaries generally define the phrase as one that is of a "trifling consequence" and a matter that is so small that the court does not even wish to consider it. Illinois courts will also likely be faced with adjudicating employee reimbursement claims for expenses that are not easily calculated.

For example, this law will require employers to reimburse employees who use their personal cell phones for work-related calls and messages. However, many employees possess unlimited phone data and plans, making it difficult to separate the costs for personal and work use. Illinois courts may turn to states such as California for guidance; courts there have required employers to reimburse employees for a "reasonable percentage" of the employee's phone bills. Unfortunately, in today's climate of widespread mobile and technological communications, calculating a "reasonable percentage" of the employee's phone bill is a task that is more easily said than done for employers.

HOW TO SURVIVE 2019

Now that this new law is upon us, employers in Illinois should create or review your existing reimbursement policies. The policies must include the methods of reimbursement and define a procedure whereby employees can submit reimbursement requests. Reimbursement policies should state the deadline for employees to submit reimbursement requests and should require necessary documentation, such as receipts, to support each

expenditure. When creating or revising reimbursement policies, you must be mindful of the “de minimis” threshold and ensure that reimbursements reasonably compensate the employee for the expenditure.

You should also revisit job descriptions, offer letters, and employment contracts to determine whether the described job duties may encourage employees to incur personal expenditures that may be considered necessary for the employee to discharge their employment duties. If so, you may consider revising such job descriptions to specifically state the expenditures necessary for the job, and that you will furnish all necessary items or equipment.

Finally, you may be concerned that this law provides employees with a free pass to incur excessive or extravagant costs in the name of necessary business expenditures. However, you may still limit excessive spending by setting approved lodging rates, defining approved travel, and fixing levels of reimbursement for equipment required for the job.

CONCLUSION

In short, a well-written expense reimbursement policy drafted on advice of legal counsel can go far in defining what expenses will reasonably be reimbursed, help prevent expensive litigation, and preserve funds for reimbursing an employee’s legitimate and necessary business expenses. In addition to the new Illinois requirements, employers should always be mindful of the reimbursement obligations under the Fair Labor Standards Act (FLSA); most notably, the obligation to reimburse employees for business expenses that were incurred for the benefit of the employer that brings the employee’s pay below the minimum wage. For help with compliance steps or to answer questions, please contact your Fisher Phillips attorney or any attorney in our [Chicago office](#).

This Legal Alert provides information about a specific new state law. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.