

Illinois Law Now Requires Employers to Reimburse Employee Business Expenses

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Effective January 1, 2019, Illinois law requires employers to reimburse employees for qualifying expenses and losses incurred by employees in the course of their employment. This represents a significant change in Illinois law, and employers should update their expense reimbursement policies and practices in light of this change.

The change is in the form of an amendment to the Illinois Wage Payment and Collection Act, 820 ILCS § 115/1 et seq. Prior to the amendment, Illinois law generally did not require employers to reimburse employees for business expenses, although many employers did so as a matter of policy, as least with respect to certain expenses.

New Illinois Law

Not all expenses incurred by an employee in connection with his or her employment must be reimbursed. Rather, under the new law, Illinois employers are obligated to reimburse an employee for “all necessary expenditures or losses incurred within the employee’s scope of employment and directly related to the services performed for the employer.” 820 ILCS § 115/9.5(a). The law 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 types of expenses that may be subject to reimbursement include business travel, customer entertainment, home office, and cellular telephone and data plan expenses, among others.

In addition, the employee must submit the reimbursement request to the employer with supporting documentation within 30 days after incurring the expense or experiencing the loss or within such longer period as permitted by the employer’s written expense reimbursement policy. Furthermore, if the employer maintains a written expense reimbursement policy, the employee must comply with the policy’s terms.

An employer, as part of a written expense reimbursement policy, may prescribe specifications or guidelines for necessary expenditures. Under the law, an employer is not required to reimburse employees for expenses that exceed those expenditure amounts as long as the limitations are reasonable.

The law specifically excludes the following types of losses from those that an employer is obligated to reimburse: (1) losses due to an employee’s own negligence; (2) losses due to normal wear; and (3) losses due to theft unless the theft was a result of the employer’s negligence.

Lessons from California?

California and several other states have enacted similar laws. Under the California law, courts have required employers to reimburse employees for a variety of expenses, including the cost of cellular telephone data plans, Internet service and other computing expenses.

However, there are differences between California law and the new Illinois law. Perhaps the most notable is the Illinois requirement that the expenditure “inure to the primary benefit of the employer.” This requirement is not present under California law.

It remains to be seen how the new Illinois law will be applied to “bring your own device” (BYOD) and other employer policies and practices. For example, it is uncertain if the provision limiting the reimbursement obligation to expenditures that “inure to the primary benefit of the employer” will be interpreted to allow an employer to refuse to reimburse expenditures for cellular telephone and/or data plans that an employee would have for personal use regardless of the need to also use the device and data plan for work.

Key Observations

Employers with employees in Illinois should review and update their expense reimbursement policies and practices in light of the new law. If no written expense reimbursement policy is in place, an employer should consider adopting one.

Having a well-constructed expense reimbursement policy is likely to be one of an employer’s best defenses to claims under the new law. The statute expressly provides that an employer is “not required to reimburse expenses that are not authorized or required by the employer” and permits an employer to set reasonable limits on the amount it will reimburse for various expenses.

If you have any questions regarding the topics discussed in this article, please contact Thomas G. Hancuch at +1 (312) 609 7824, Fabian Limon at +1 (312) 609 7972, any of our Chicago Labor & Employment attorneys or any Vedder Price attorney with whom you have worked.



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