

# FLASHPOINTS (ARCHIVED 2019)

## EMPLOYMENT & LABOR LAW FLASHPOINTS JANUARY 2019

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### Heading Into the New Year with New Employment Laws

Of Illinois' new employment laws for 2019, there are two standouts of which labor and employment practitioners should be aware as they counsel their clients on employment policies and provide advice on employment scenarios.

#### *Changes to Break Time for Nursing Mothers*

The Illinois Nursing Mothers in the Workplace Act, 820 ILCS 260/1, *et seq.*, was amended by P.A. 100-1003 (eff. Aug. 21, 2018) to enhance the rights of nursing mothers in the workplace. This Act applies to employers with more than five employees. As set forth in detail below, the Act was amended to ensure nursing mothers do not lose compensation for time they use to express breast milk. The Illinois Act now more closely aligns with the federal Fair Labor Standards Act of 1938 (FLSA), ch. 676, 52 Stat. 1060, requirements related to nursing mothers.

Per the amendment, employers must provide “reasonable break time” each time a nursing mother needs to express milk for a period of one year following the birth of a child. 820 ILCS 260/10. Additionally, employers may not reduce the mother’s compensation for the time used for the purpose of expressing milk or nursing a baby. The mother’s time to express milk *may* run concurrently with break time already provided to the employee — whereas previously the law required such time to run concurrently.

Finally, employers are obligated to provide the aforementioned reasonable break time unless doing so would create an “undue hardship” for the employer. *Id.* Per the amendment, the Act uses the definition of “undue hardship” found in the Illinois Human Rights Act, 775 ILCS 5/1-101, *et seq.*, which was added in 2017 to address reasonable accommodations for pregnancy. As such, “undue hardship” is defined as follows:

**an action that is prohibitively expensive or disruptive when considered in light of the following factors: (i) the nature and cost of the accommodation needed; (ii) the overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation, the number of persons employed at the facility, the effect on expenses and resources, or the impact otherwise of the accommodation upon the operation of the facility; (iii) the overall financial resources of the employer, the overall size of the business of the employer with respect to the number of its employees, and the number, type, and location of its facilities; and (iv) the type of operation or operations of the employer, including the composition, structure, and functions of the workforce of the employer, the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the employer. 775 ILCS 5/2-102(J).**

#### *New Requirement To Reimburse Employee Expenses*

The Illinois Wage Payment and Collection Act, 820 ILCS 115/1, *et seq.*, was amended by P.A. 100-1094 (eff. Jan. 1, 2019) to impose an affirmative duty on employers to reimburse certain expenses incurred by their employees. Previously, the Act did not address the issue of expense reimbursement. Now, per the amendment, employers are obligated to reimburse employees for “all necessary expenditures” incurred within the employee’s scope of employment and directly related to services performed for the employer. 820 ILCS 115/9.5(a). The Act

defines “necessary expenditures” as “all reasonable expenditures or losses required of the employee in the discharge of employment duties” that “inure to the primary benefit of the employer.” *Id.* The expenditure must be authorized or required by the employer for an employee to be entitled to any form of reimbursement.

To receive reimbursement under the Act, employees must provide supporting documentation of their expenditures within 30 calendar days after the expenses were incurred. If supporting documentation does not exist or goes missing, the employee will be required to submit a signed statement regarding the receipts and expenses.

The amendment further provides that employees are not entitled to expense reimbursements if an employer has an established written expense reimbursement policy and employees fail to comply with said policy. If the written policy establishes specific guidelines surrounding necessary expenditures, an employer will not be required to reimburse portions of expenditures that exceed the guidelines contained in the policy if the policy does not provide for either a de minimis or no reimbursement entirely.

Finally, employers are specifically not liable for reimbursements unless they have authorized or required the employee to incur the necessary expenditure *or* failed to comply with their own written reimbursement policy.

Practitioners should stay tuned to the Illinois Department of Labor’s website for potential FAQs and/or regulations on this new mandate.

*For more information about employment and labor law, see our Employment Law Practice Guides, [EMPLOYMENT TERMINATION: PROCEDURES, GROUNDS, AND CHALLENGES — 2018 EDITION](#), [EMPLOYMENT TERMINATION: EMPLOYER OBLIGATIONS AND WORKPLACE CONSIDERATIONS — 2018 EDITION](#), [EMPLOYMENT DISCRIMINATION: PRACTICE AND PROCEDURE — 2018 EDITION](#), and [EMPLOYMENT DISCRIMINATION: UNLAWFUL GROUNDS AND PREVENTION — 2019 EDITION](#), all of which are can be viewed for free by Online Library subscribers. If you don’t currently subscribe to the Online Library, visit [www.iicle.com/subscriptions](http://www.iicle.com/subscriptions).*

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