

FLASHPOINTS (ARCHIVED 2023)

EMPLOYMENT & LABOR LAW FLASHPOINTS AUGUST 2023

Thomas C. Garretson, [Robbins Schwartz](#), Chicago
312-332-7760 | [E-Mail Thomas C. Garretson](#)

Illinois Department of Labor Adopts New Expense Reimbursement Rules for Employers

On March 31, 2023, the Illinois Department of Labor (IDOL) adopted regulations in an attempt to clarify an employer's obligations for the reimbursement of employee expenses under the Illinois Wage Payment and Collection Act (IWPCA), 820 ILCS 115/1, *et seq.* While these regulations were adopted over four years after the IWPCA was amended to impose affirmative expense reimbursement requirements on employers, the new regulations should assist employers when deciphering the scope of their reimbursement obligations moving forward.

Effective January 1, 2019, §9.5 of the IWPCA required employers to reimburse an employee for all necessary expenditures or losses incurred by him or her within his or her scope of employment and directly related to services performed for his or her employer. 820 ILCS 115/9.5. The IWPCA 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." *Id.* Under the IWPCA, an employee is not entitled to reimbursement if the employer has an established written expense reimbursement policy and the employee fails to comply with the policy. *Id.* However, an employer may not institute a policy that provides employees with no reimbursement or de minimis reimbursement. *Id.* Since taking effect in 2019, and in the absence of any accompanying guidance or regulations, Illinois employers have been forced to interpret on their own as to what is actually considered to be a "necessary expenditure" requiring reimbursement under the IWPCA, which became particularly challenging as many employees worked remotely from home due to the COVID-19 pandemic.

In an attempt to provide both employers and employees with guidance regarding what is a "necessary expenditure," IDOL has adopted new regulations that clarify what is to be taken into account when assessing whether an employee's expense was incurred to the primary benefit of his or her employer. [56 Ill.Admin. Code §300.540](#). Specifically, IDOL has identified five relevant factors to consider when determining if an expense is to the primary benefit of the employer:

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. 55 Ill.Admin. Code §300.540(a)(1).

The regulations expressly provide that no single factor is dispositive but that the analysis should focus on the extent to which the expense benefits the employer and its business and business model. The regulations do not, however, shed any additional light on how to analyze whether an expense is "necessary" for the employee to perform his or her job duties, nor does it specify what reimbursement amounts will be considered more than "de minimis."

With respect to the issue of an employer's written expense reimbursement policy, which, per the IWPCA, permits employers to deny reimbursement should an employee fail to comply with its terms, the regulations now

state that if an employer, whether through direct authorization or practice, allows for reimbursement of amounts that exceed those provided in the written policy, the employer will then be liable for full reimbursement of such expenses to the employee. Finally, the new regulations contain additional recordkeeping obligations, requiring employers to maintain the following records for at least three years:

1. all policies regarding reimbursement;
2. all employee requests for reimbursement;
3. documentation showing approval or denial of reimbursement; and
4. documentation showing actual reimbursement and supporting documents. 55 Ill.Admin. Code §300.540(c).

While these new regulations are a welcome addition for any employers that may be struggling with implementation of the IWPCA's expense reimbursement provisions, they unfortunately still leave a number of legitimate questions remaining open for interpretation. As such, an employer's best option to minimize employee complaints that they were denied expense reimbursement required under the IWPCA is still to adopt and consistently apply a detailed written expense reimbursement policy that specifies the expenses eligible for reimbursement and the process employees must follow to receive said reimbursement. Should an employee fail to comply with the requirements of the policy, and as long as the policy does not provide for no reimbursement or de minimis reimbursement, an employer may deny the expense reimbursement. Employers without an existing expense reimbursement policy should work diligently toward adopting such a policy, whereas those with an existing policy should review to consider whether their policy aligns with IDOL's new regulations.

For more information about employment and labor law, see CONDUCTING THE EMPLOYMENT PRACTICES AUDIT (IICLE®, 2023). Online Library subscribers can view it for free by clicking [here](#). If you don't currently subscribe to the Online Library, visit www.iicle.com/subscriptions.

Copyright 2024 IICLE