

Update: IWPCA Amendment Requires Illinois Employers to Reimburse Employee Expenses

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As of January 1, 2019, Illinois employers must reimburse employees for certain expenses incurred in connection with employment. The requirement was signed into law last year through an amendment to the Illinois Wage Payment and Collection Act. (Read the full story in our October 2018 article titled "[Spare No Expense: With IWPCA Amendment, Illinois Joins Ledger of States Requiring Reimbursement of Employee Expenses](#).") Many employers remain unaware of the new requirement and need to review their reimbursement policies to ensure compliance.

Under the new law, employers must "reimburse an employee for all necessary expenditures or losses incurred by the employee within the employee's scope of employment and directly related to services performed for the employer." For purposes of the law, "necessary expenditures" means "all reasonable expenditures or losses required of the employee in the discharge of the employment duties and that inure to the primary benefit of the employer." Employees must submit supporting documentation for an expense within 30 days after incurring the expense or provide a signed statement if supporting documentation is nonexistent, missing, or lost.

However, employers are not required to reimburse employees for expenses if the employer has an established written expense reimbursement policy and the employee fails to comply with it. For example, if an employee's expenditures exceed the employer's written specifications or guidelines, then the employer is not liable for the amount of the employee's expenditure that exceeds the policy specifications or guidelines, "so long as the employer does not institute a policy that provides for no reimbursement or de minimus reimbursement."

It remains unclear how broadly courts in Illinois will interpret the coverage of the new law. In other jurisdictions, similar laws have been interpreted expansively to include reimbursement of data usage and internet plan costs when employees use their personal devices for work. For now, our recommendation is to be conservative and err on the side of reimbursing at least the cost of employees' business use of their personal cell phones.

However, employers should keep in mind that expense reimbursement policies are not one-size-fits-all, and the approach that works for one employer's workforce may not be practical for another. Employers have a variety of options for compliance. For example, some employers choose to follow the letter of the statute and require employees to submit a request for reimbursement, along with a

copy of their cell phone bills, marked to allocate business use. Other employers prefer to pay a fixed monthly amount in reimbursement of their employees' business use of their personal cell phones, largely to avoid the hassle of reviewing so many employees' bills and assessing the accuracy of their business use allocation. Still other employees elect to provide company-issued cell phones to avoid the need for reimbursement altogether.

Illinois employers should assess which approach is most practical for their own businesses and review their current expense reimbursement policies to ensure compliance with the amendment, as well as to ensure that they are taking advantage of the amendment's allowance for a written policy that limits reimbursement of expenses.

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National Law Review, Volume IX, Number 144

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