

Legal Update

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EMPLOYERS MUST REIMBURSE EMPLOYEES FOR CERTAIN BUSINESS-RELATED EXPENSES AND LOSSES

By Jon Vegosen, Cecilia M. Suh, and Paul M. King

Introduction

As discussed in our January 2019 [Legal Update](#), an amendment to the Illinois Wage Payment and Collection Act effective as of January 1, 2019 (the “Amendment”) requires employers to reimburse employees for all “necessary expenditures” (i.e., expenses or losses) that are within their scope of employment and directly related to services they have performed for the employer. Although the exact requirements of the Amendment are difficult to summarize until the law concerning the Amendment develops, this newsletter endeavors to provide insights on some of the most frequently asked questions about the Amendment.

What expenses do employers have to reimburse under the Amendment?

Illinois employers have to reimburse employees for expenses that are (a) within the scope of an employee’s employment, (b) related to services the employee performs, (c) for the primary benefit of the employer, and (d) required or authorized by the employer for the employee to incur. Whether an expense is reimbursable under Illinois law will likely depend on each individual situation. Analysis of a similar California law by California courts may provide guidance for how various types of expenses will be treated under Illinois law. For example, California courts have determined that many types of employee expenses may be reimbursable, such as the cost of training sessions, uniforms, and even some magazine subscriptions. In addition, California courts have held that a portion of a monthly cell phone bill may constitute a reimbursable expense. In contrast, some California courts have decided that a flight attendant was not required to be reimbursed for the cost of a passport and that a waitress was not required to be reimbursed for the cost of non-slip shoes.

Does an employer have to reimburse an employee for cell phone expenses?

The Amendment does not specifically mention cell phone expenses, but such expenses could conceivably be reimbursable under the Amendment. If an employer can show that an employee is neither required nor expected to use his or her cell phone for work, then the employer should have a good argument that the employee’s cell phone expenses are not reimbursable. If, however, an employee is required to use his or her cell phone for work, or if an employer allows such use, the employer will likely be required to reimburse the employee for the portion of the cell phone bill that is work related. This could be the case even if the employee incurs no increase in his or her cell phone bill as a result of such work-related use, and even if someone other than the employee pays the employee’s cell phone bill. Unfortunately, there is little guidance as to what portion of a cell phone bill an employer should reimburse an employee.

What employee expenses or losses are employers not required to reimburse?

Employers do not have to reimburse employees for expenses or losses that are for an employee’s personal use or benefit, due to an employee’s own negligence, due to normal wear and tear, or due to theft (unless the theft was a result of the employer’s negligence). Examples of non-reimbursable expenses may include entertainment expenses, fines for automobile violations, or other penalties/fees.

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Are there circumstances where an employer does not have to reimburse an employee for business expenses?

Yes. If any of the following apply, an employer need not reimburse an employee under the Amendment:

- a. the employer has a written expense reimbursement policy with which the employee failed to comply;
- b. the employer did not require or authorize the employee to incur the expense; or
- c. the expense exceeds the guidelines set forth in the employer's reimbursement policy, provided that the policy does not provide for no reimbursement at all or only nominal reimbursement.

What can employers do to avoid fraudulent costs and minimize the likelihood of litigation?

Employers should adopt a written expense reimbursement policy. A well-crafted reimbursement policy can help (1) reduce the risk of liability for violating the Amendment, and (2) avoid the risk that an employer reimburses an employee for a non-business expense or an expense that the employee did not actually incur. The more detailed the policy, the better. The policy should *at least* outline the type of information an employee must submit before reimbursement from the employer and should cap the total amount that is reimbursable on certain expenses, but it should not limit reimbursement to unrealistically small amounts.

The importance of a carefully written expense reimbursement policy cannot be overstated. A good policy can both help ensure compliance with the Amendment and save an employer money.

What are the consequences of employers not reimbursing employees?

Employers that do not reimburse employees in accordance with the terms of the Amendment risk costly lawsuits and potentially even class action litigation by employees. In addition, corporate officers, decision-makers, or other agents of an employer who knowingly permit an employer to violate the Illinois Wage Payment and Collection Act may be held individually liable.

Conclusion

The above FAQs are based on both language in the Amendment and the statutes and interpretations of similar laws in other states. One must bear in mind, however, that the language of similar laws in other states is not identical to the language of the Amendment. Therefore, interpretations and results with respect to the Amendment may differ from those under laws of other states. As developments with respect to the Amendment unfold, the answers above may become clearer or need to be refined. With the current uncertainty, the best way for an employer to comply with the Amendment is to contact an attorney for advice about a particular situation or expense and to prepare a reimbursement policy.

FVLD publishes updates on legal issues and summaries of legal topics for its clients and friends. They are merely informational and do not constitute legal advice. We welcome comments or questions. If we can be of assistance, please call or write Jon Vegosen, 312-701-6860, jvegosen@fvldlaw.com, Cecilia M. Suh, 312-701-6841, csuh@fvldlaw.com, Paul M. King, 312-701-6842, pping@fvldlaw.com, or your regular FVLD contact.

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