

Service

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Two Amendments to Employment Laws Increase Obligations on Illinois Employers

Illinois amended two of its existing employment laws after the Illinois General Assembly's 2018 regular session, imposing new obligations on employers:

the Illinois Wage Payment and Collection Act (820 ILCS 115/9.5), and

the Illinois Nursing Mothers in the Workplace Act (820 ILCS 260/10).

Illinois Wage Payment and Collection Act (IWPCA)

Prior to the 2018 amendment, Illinois law did not require employers to reimburse employees for expenses related to their employment. Effective January 1, 2019, the amendment adds a new section to the IWPCA requiring employers to reimburse employees for all necessary expenditures and losses incurred by the employee within the scope of employment and directly related to services performed by the employer. The terms of the amendment also authorize the Illinois Department of Labor to issue regulations consistent with the IWPCA and federal laws.

What's Covered:

Defines necessary expenditures and losses as those that are incurred by the employee as part of their employment duties and that primarily benefit the employer.

Excludes losses incurred due to the employee's own negligence, normal wear, and losses due to theft unless the theft is the result of the employer's negligence.

Requires employees to either submit supporting documentation for the expense, or a signed statement by the employee if supporting documentation is non-existent or missing.

Provides a 30 calendar-day time period beginning from the date the expenditure or loss is incurred for an employee to submit the request for reimbursement, along with the documentation or signed statement.

Allows an employer to provide more than 30 days (but not less than 30 days) for submission of a request for reimbursement pursuant to a written expense reimbursement policy.

Exceptions Precluding Reimbursement:

If an employer has a written expense reimbursement policy, an employee is not entitled to reimbursement if the employee fails to comply with the policy.

An employer is not required to reimburse an employee unless the employer authorized or required the employee to incur the necessary expenditure.

An employer will be held liable for failure to reimburse necessary expenses if the employer fails to comply with its own written expense reimbursement policy.

An employer is not liable for the amount of expenditures submitted for reimbursement that exceeds the specifications or guidelines contained in the written expense reimbursement policy. An employer, however, is precluded from establishing a policy of no or de minimus reimbursement.

What This Means to You

Illinois employers are not alone in facing an obligation to reimburse employees for expenditures and losses incurred on behalf of the employer and within the scope of employment. Several states and the District of Columbia require employers to reimburse employees for “necessary” employment-related expenses.

Of particular concern for employers, though, is the increase in class action lawsuits in California against employers to recover unreimbursed necessary expenses on behalf of large groups of employees. Unlike Illinois law, however, the California statute does NOT contain language that provides employers with the ability to limit reimbursement expenses pursuant to a written expense reimbursement policy.

Consequently, Illinois employers can insulate themselves from claims of unreimbursed expenses and related class actions by implementing or updating a written expense reimbursement policy that

defines the necessary expenses that will be reimbursed by the employer and the amount or rate of reimbursement. The amendment to the IWPCA provides a guideline for the development of an employer's written expense reimbursement policy.

Nursing Mothers in the Workplace Act

Effective immediately, Illinois employers must provide employees paid break time for the purpose of expressing milk or nursing for a period of one year following the birth of a child. Previously, the law required employers to provide unpaid "reasonable" break time and did not limit the period of time after birth during which breaks were mandated.

Requirements:

Requires employers to provide reasonable paid breaks to mothers for the purpose of expressing milk or nursing for a period of one year following the birth of a child.

Requires employers to provide an employee with a break to express milk or nurse each time the need arises.

Prohibits an employer from reducing an employee's compensation by the amount of time used to express milk or nurse.

Abrogates the requirement in the prior law that break time run concurrently with other breaks.

Introduces flexibility into the law by providing that break time for expressing milk or nursing may run concurrently with other breaks.

Abrogates the exception previously provided to employers where break times would "unduly disrupt the employer's operations." Instead, the amendment requires compliance unless the employer establishes an "undue hardship" as defined in the Illinois Human Rights Act (775 ILCS 2-102(J)).

Effect of Wage and Hours Laws:

Illinois law requires one unpaid meal break of 20 minutes or more after 7.5 hours of continuous work.

The FLSA requires an employer to compensate employees during breaks of between 5 and 20 minutes.

No conflict exists with the federal wage and hours laws. All breaks for nursing are required to be paid without regard to the length of the break for expressing milk or nursing.

A potential discrepancy exists between the Illinois law mandating paid breaks for nursing and the Illinois wage and hour laws requiring unpaid meal breaks. To the extent an employer opts to provide one of the breaks for nursing mothers to occur during the meal break, the amount of time that is unpaid should be consistent for all employees, whether nursing or not. Additional time needed by mothers for expressing milk must be paid.

The Husch Blackwell Labor and Employment team often helps clients review their employment policies. If you have questions about the effect of changes in the Illinois law on your policies, or would like us to review your policy, please contact Anthony Grice or Erik Eisenmann or your Husch Blackwell attorney.