

TYPES NOT MAPPED YET January 08, 2019 | TTR not mapped yet | Ryan J. Gehbauer

# What's new with the Illinois Wage Payment Act and four other HR law changes for 2019

As we enter a new year, there are a number of changes to Illinois law that employers should make note of, including a significant amendment to the Illinois Wage Payment Act that makes Illinois home to one of the most expansive employee expense reimbursement laws in the country.

### The impact of the amendment to Illinois Wage Payment Act

Effective January 1, 2019, an amendment to the Illinois Wage Payment and Collection Act (IWPCA) requires employers to reimburse employees for all expenditures or losses incurred within the scope of their employment, and which were authorized or required by their employer. Illinois will become the ninth state to statutorily impose expense and loss reimbursement requirements on employers.

Going forward, Illinois employers must reimburse employees 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." 820 ILCS 115/9.5. "Necessary expenditures" means 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.

Reimbursement is not required for:

1. Expenses or losses that arise from the employee's own negligence;
2. Losses attributable to normal wear;
3. Losses due to theft (unless the theft occurred as a result of the employer's negligence);
4. Expenses not authorized or required by the employer; and
5. Expenses not submitted in compliance with the employer's written expense reimbursement policy, unless the employer also fails to follow its policy.

The new law requires employees to submit "appropriate" supporting documentation for any necessary expenditure within 30 calendar days after incurring the expense, unless the employer's written policy provides for more time. However, even if supporting documentation does not exist, is missing, or is lost, the law permits employees to submit "a signed statement regarding any such receipts." The law does not specify what a "statement" regarding a receipt must contain, whether an employer without a written policy must accept a reimbursement request after 30 days, and/or whether an employer can impose a shorter period for submitting documentation. It remains to be seen how the Illinois Department of Labor and/or Illinois courts will interpret the new law.

Why the new law matters

The amendment is one of the most expansive employee expense reimbursement laws in the country, which creates new obligations and legal risks for employers. Employees may now be able to bring actions to recover un-reimbursed expenses as wages recoverable under the IWPCA. Such actions, if successful, would also permit the employee to recover liquidated damages and attorney's fees, which are available under the IWPCA.

While it is unclear at this time how broadly the Illinois Department of Labor and Illinois courts will interpret the "necessary expenses" and "directly related to services performed for the employer" language, other states have interpreted similar language to include expenses such as personal cell phone data plans, internet bills, remote computing equipment such as routers, laptops, and tablets, and other computing expenses, regardless of the marginal cost to employees.

California courts have interpreted nearly identical language to require reimbursing employees who use their personal cell phones for work-related calls, even if those employees have unlimited phone/data plans and incur no additional expenses as a result of the calls.

#### What you should do now

The new law permits Illinois employers to establish written expense reimbursement policies that set guidelines for the types of expenses and dollar amounts that will be reimbursed, and the employer may deny reimbursement if the employee fails to comply with the employer's written policy.

However, the policy may not provide for no reimbursement or de minimus reimbursement. You should establish or update your expense reimbursement policies and practices to ensure they: (1) are in compliance with the new law; and (2) clearly set forth the type of expenses that are authorized for reimbursement, the amounts that are authorized for reimbursement, and any requirements to receive reimbursement, including required supporting documentation and the time by which employees should submit those required supporting documents.

We can readily assist you with preparing, and implementing, an expense reimbursement policy that meets both objectives. If you have any questions regarding this new law, or best practices for dealing with the law, contact your Thompson Coburn lawyer.

### Equal pay protections for African-American employees

An amendment to the Illinois Equal Pay Act of 2003 (IEPA) expands the statute to cover pay discrimination between African-Americans and non-African-Americans. The Amendment prohibits employers from paying African-Americans less than non-African-Americans who are performing "the same or substantially similar work on a job that requires equal skill, effort, and responsibility and is performed under similar working conditions."

### Illinois Nursing Mothers in the Workplace Act explained

Previously, Illinois employers were required to provide nursing mothers with unpaid break time for lactation purposes. Now, employers must provide reasonable paid break time for nursing for up to one year after the birth of the child. These breaks may run concurrently with break time that was already provided to the employee.

Under prior law, employers were only required to provide nursing breaks to nursing mothers if doing so would not "unduly disrupt the employer's operations." Now, there is a higher standard; employers are required to provide breaks to nursing mothers unless they can prove that doing so would create an "undue hardship" for the employer as defined by the Illinois Human Rights Act (IHRA).

### The Illinois Service Member and Reemployment Rights Act

Effective January 1, 2019, the Illinois Service Member Employment and Reemployment Rights Act (ISERRA) incorporates the provisions of the federal Uniformed Services Employment and Reemployment Rights Act (USERRA). This means service members are entitled to: leaves of absence for military service; the right to have employment reinstated after military service; and protections against employment discrimination based on military service.

#### Under the new law:

- Employees on military leave must be granted at least an average performance evaluation rating based on the three years preceding the military leave;
- Employers must continue to pay service member salaries during annual training service for up to 30 non-consecutive days per calendar year;
- When a service member is on active duty, the employer is required to continue contributions to the employee's group health insurance premium if the employee chooses to continue receiving the benefits while on military leave; and
- Employers must post a notice of employee rights under ISERRA. You can [access the required notice here](#).

### Changes to the Illinois Human Rights Act for 2019

#### Time to file charge of discrimination

Consistent with federal law, employees now have 300 days to file a Charge of Discrimination with the Illinois Department of Human Rights (IDHR) for alleged violations of the IHRA. Previously, Illinois employees only had 180 days to file a charge at the IDHR.

### New notice requirement and right to sue requests

Illinois employers must include in an employee handbook information concerning an employee's rights under the IHRA, including the right to be free from unlawful discrimination and sexual harassment and the right to certain reasonable accommodations. The notice shall also be displayed in the workplace where employees can readily see it.



An individual who files a charge under the IHRA may now opt-out of the IDHR's administrative investigation process and proceed directly to Illinois state court. To exercise this provision, the employee must send notice of his or her intent to opt out of the IDHR investigation within 60 days of receiving notice from the IDHR of the employee's right to opt-out. The IDHR must send notice of the employee's right to opt-out within 10 days of the date the charge was filed. Once the employee's request is granted, he or she has 90 days to file suit in state court.

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