Commentary

Illinois DOL adopts regulations on employee expense reimbursement and wage deductions

By SCOTT CRUZ


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Employers, take note: The Illinois Department of Labor (IDOL) recently adopted new regulations for employee expense reimbursements and paycheck deductions. These include regulations that:

• create a five-factor test for determining when an employer is required to reimburse an employee's work-related expenses;

• clarify when employers may be liable for payment of employee expenses that exceed amounts noted in written policy;

• create new recordkeeping requirements for employee-incurred expenses;

• clarify when an employee may file a claim with IDOL seeking reimbursement of expenses;

• clarify what constitutes an enforceable wage deduction agreement; and

• create enhanced penalties for violations of the Illinois Wage Payment and Collection Act (IWPCA).

The new regulations took effect March 31.

Reimbursable Expenses Five-Factor Test

Previously, IDOL had no written guidance for determining if a particular work-related expense an employee incurred was for the "primary benefit" of the employer. Fortunately, that has changed. The new regulations create a five-factor test:

• Does the employee expect reimbursement?

• Is the expense is required or necessary to perform the employee's job duties?

• Is the employer is receiving a value it would otherwise need to pay for?

• How long the employer is receiving the benefit?

• Is the expense required of the job?

Employers should immediately revise their written expense reimbursement policies to incorporate the five-factor test. If employers do not have such a policy, they should create one with the assistance of employment counsel.

New Written Expense Policy Guidance

All employers should have a written expense reimbursement policy. Strict adherence is strongly recommended, based on the new possible ramifications for any variance from the policy, especially as it relates to reimbursable expense amounts.

The new regulations provide that *even if* an employer's written expense reimbursement policy establishes specifications or guidelines for reimbursable expenditures, but the employer allows for reimbursement of amounts that exceed those specified in its written policy, the employer will be liable for full reimbursement of such expenses.

Thus, employers must be diligent in following their policies. If they deviate, this may result in the IDOL finding an employer-approved change and requiring the employer to pay the full amount of the reimbursement to the employee.

New Recordkeeping Requirements for Reimbursable Expenses

The new regulations require employers to keep the following records for three years:

• All policies regarding reimbursement;

• All employee requests for reimbursement;

• Documentation showing approval or denial of reimbursement; and

• Documentation showing actual reimbursement.

Thus, it is imperative that employers inform any individuals who review or approve/deny employee expense reimbursement requests of the new recordkeeping rules. Employers should also update their document retention policies to comply.

Denial of Requests for Reimbursements

The new regulations provide that once an employer denies an employee's reimbursement request or fails to respond to such a request, if the expenses are of a nature that should have been reimbursable under the new five-factor test, an employee may file a claim with IDOL for reimbursement.

Employers should explain in their written policies the process for approving or denying reimbursement requests. The policy should also include the anticipated period of time it will take to review and make a reimbursement determination, to prevent employees from hastily filing a claim of a failure to respond.

Deduction of Wages from Employee Paychecks

Before the new regulations, an employer could lawfully deduct wages from an employee's paycheck when, for example, the employer and employee entered into a cash advance repayment agreement, the advance was to be repaid through payroll deductions until the amount was repaid, the same amount was to be deducted each pay period, and the agreement allowed for voluntary withdrawal for the deduction.

The new regulations require more for such agreements to be enforceable. Wage deduction agreements must now specify a defined duration for the deductions, up to six months. Thus, employers should no longer solely indicate, for example, that "the agreement remains in place until the amount is repaid." Rather, they should specify a period in which the paycheck deductions will occur.

New Enhanced Penalties for IWPCA Violations

The new regulations provide that if IDOL determines an employer violated the IWPCA because the employer owes wages or final compensation (defined to include expense reimbursements) to the employee, damages will no longer be assessed at 2 percent of the amount owed. Now, damages will be assessed at 5 percent of the amount owed, multiplied by the number of months between when the violation occurred and when the employer pays the amount owed.

Accordingly, employers should exercise caution in denying reimbursement expenses, especially in the absence of a written policy, and in particular, if there is a good-faith basis to deem the expense request reimbursable under the new five-factor test.

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Illinoisans of every age, income bracket moving out of state

The bulk of those leaving Illinois are aged 26-54 and their dependents

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Data from the Internal Revenue Service shows Illinois in 2021 lost residents of every age and income level, with the majority of them prime working-age adults and earning more than $100,000.

Of the residents who left, 51% made more than $100,000 per year, 25% made less than $50,000 and 24% made $50,000 to $100,000.

Those who left the state between 2020 and 2021 also reported 23% higher income growth than those who moved into the state. That indicates leaving Illinois provided better financial returns than moving here.

Not only did Illinoisans of all income groups leave the state in 2021, Illinoisans from every age group also fled on net during the year.

Particularly troubling is 64% of residents lost on net were from tax filers age 26-54 and their dependents. Those ages 65 and up represented only 14% of Illinoisans who left the state while 5% were below age 26. That contradicts the idea Illinois' migration problems were solely because high school graduates attended college out of state.

Illinois lost residents from every combined age and every income bracket recorded by the IRS.

The IRS data likely underestimates Illinois' losses, because 32 million households (18%) nationwide don't file federal tax returns. Changes in filing activity can prevent matching up tax returns year-to-year.

Despite more and more data confirming Illinois has a serious exodus, Gov. J.B. Pritzker and other Illinois politicians continue to deny there is a problem. In addition to tangible evidence of Illinois' outmigration crisis from the IRS, new surveys of Illinoisans show 51% would leave the state if given the opportunity. The main reason Illinoisans want to leave the state: high taxes.

The record departures should be an alarm to state leaders. They must adopt policies to make it easier for residents to stay in Illinois. Cut the tax burden, reduce arduous business regulations and maybe Illinois can stop bleeding residents.

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