

Recent Developments in Employment Law - Applicable to Illinois Employers



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Reimbursement of Employee Expenses

- ▶ Effective January 1, 2019 - Illinois Wage Payment Collection Act amended
- ▶ 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.”
- ▶ A “necessary expenditure” is defined as “all reasonable expenditures or losses” that employees are required to make while performing their job duties and that primarily benefit the employer.

Reimbursement of Employee Expenses

- ▶ Employers are NOT required to reimburse employees for losses due to:
 - ▶ An employee's own negligence;
 - ▶ Normal wear and tear; or
 - ▶ Due to theft unless the theft was a result of the employer's negligence.
 - ▶ Employees' failure to comply with an employer's written policy;
 - ▶ Amounts in excess of employers' written policy guidelines for necessary expenditures (so long as the policy does not provide for no reimbursement or *de minimis* reimbursement); or
 - ▶ Unauthorized expenses and expenses not required by the employer.

Written Expense Reimbursement Policies

1. Employers must allow a minimum of 30 days to submit expense reimbursement requests.
2. If employees do not have supporting documentation or it is lost, employees must be allowed to submit a signed statement regarding the lost receipts.

3. Draft a policy specifying allowable expenses (based on position), limits on expenses, a timeframe within which reimbursement requests must be submitted, necessary documentation to support an expense, and the method of reimbursement.
4. Employees have ten (10) years to file an IWPCA claim and can recover costs and attorneys fees, as well as damages of up to 2% for each month of any underpayment.

Illinois Equal Pay Act of 2003 (Amended)

- ▶ Equal Pay Act prohibits pay discrimination based on an individual's sex for the same or substantially similar work on jobs that require equal skill, effort, and responsibility, and which are performed under similar working conditions.
- ▶ Exceptions include where differences in pay were due to:
 - ▶ A seniority system;
 - ▶ A merit system;
 - ▶ A system that measures earnings by quantity or quality of production; and
 - ▶ A differential based on any other factor other than: (i) sex or (ii) a factor that would constitute unlawful discrimination under the Illinois Human Rights Act.

Illinois Equal Pay Act Expanded

- ▶ Effective January 1, 2019: The Illinois Equal Pay Act now prohibits paying African-American employees at a rate less than that which employers pay to other employees who are not African-American for the same or substantially similar work on jobs that require equal skill, effort, and responsibility, and which are performed under similar working conditions.

Illinois Service Member Employment & Reemployment Rights Act (ISERRA)

- ▶ Effective: January 1, 2019 - Expanded state version of USERRA.
- ▶ The enacting legislation consolidated existing job protections within ISERRA, and repealed the following Illinois Acts:
 - ▶ Military Leave of Absence Act,
 - ▶ Public Employee Armed Services Rights Act,
 - ▶ Municipal Employees Military Active Duty Act, and
 - ▶ Local Government Employees Benefits Continuation Act.

ISERRA (continued)

▶ Who is Protected:

- ▶ All employees who are members of the uniformed services, including the Army, Navy, Marine Corps, Air Force, Coast Guard, and reserve components of each service.
- ▶ Under ISERRA, coverage extends to:
 - ▶ National Guard members performing state duty,
 - ▶ Civil Air Patrol,
 - ▶ the Merchant Marines when performing official duties in support of an emergency; and
 - ▶ Service members who require follow-up care for an injury sustained or aggravated from military service.

ISERRA (continued)

▶ Basic Protections:

- ▶ Employers must grant military leave to service members and service members must only give employers advanced notice of pending military service.
- ▶ Employees do not have to factor in an employers' needs as to the timing, frequency, or duration of military leave. Employers can bring concerns to the proper military authorities (e.g. a commander), but no accommodation of the concern is guaranteed.
- ▶ Employers can require notice by appropriate military authority on official letterhead.

ISERRA (continued)

- ▶ Basic Protections (continued):
 - ▶ For the period of military leave, service member employees should be credited with the average of the efficiency or performance ratings received in the 3 years prior to the military leave.
 - ▶ Additionally, the rating must not be less than the rating that the service member employee received for the rated period immediately prior to their military leave.
 - ▶ In computing seniority and service requirements for promotion eligibility or any other benefit, the period of military duty must be counted as civilian service.

ISERRA (continued)

- ▶ Additional Benefits for Public Employee Members of a Reserve Component:
 - ▶ **Concurrent compensation:** During military leave for annual training, public employees must continue to receive full compensation as a public employee for up to 30 days per calendar year.
 - ▶ **Differential Compensation:** During periods of military leave for active service, public employees must receive differential compensation.
 - ▶ "Differential compensation" is the difference between the amount of pay an employee receives for military service and the employee's daily rate of pay as a public employee.
 - ▶ **Continued Health Benefits:** Employer must pay the employer's share of the full premium and administrative costs.

Illinois Nursing Mothers in the Workplace Act Amendments

- ▶ The law was amended on August 21, 2018 to provide nursing mothers with the following break time rights for one year following the birth of a child:
 - ▶ Reasonable break time for an employee who needs to express breast milk for her nursing infant child, without reduced pay.
 - ▶ Break time may run concurrently with any break time already provided to the employee.
 - ▶ Must provide reasonable break time as needed by the employee, unless doing so would create an undue hardship as defined by the IHRA.
 - ▶ Applies to employers with more than five (5) employees.

Illinois Human Rights Act (IHRA)

- ▶ Complainants now have 300 calendar days (same as EEOC) after an alleged civil rights violation to file a charge with the Illinois Department of Human Rights (extended from 180 days).
- ▶ Complainants must submit a written request to opt-out to the IDHR within 60 days of receiving notice from the IDHR of their right to opt-out. Complainant must file suit in state court within 90 days of receiving the right to sue notice.

New IDHR Posting and Policy Requirements

- ▶ IDHR released a new poster titled “You Have the Right to Be Free From Job Discrimination and Sexual Harassment” that employers must display where they customarily display employee notices.
- ▶ Employers must also update employee handbooks to include information concerning the rights of employees to be:
 1. Be free from unlawful discrimination or sexual harassment in the workplace;
 2. File a charge of discrimination or sexual harassment; and
 3. Obtain certain reasonable accommodations such as those based on pregnancy and disability.

Amendment to the Local Records Act

- ▶ Effective August 23, 2018: Disclosure of Severance Agreements Due to Sexual Harassment and Sexual Discrimination
 - ▶ Applies to units of local government, school districts, community college districts, or other local taxing bodies.
 - ▶ Within 72 hours of a local taxing body approving a severance agreement with an employee or contractor who engaged in sexual harassment or sexual discrimination, the employer must publish information regarding the agreement.

50 ILCS 205/1

Required Publications

- ▶ The full name and title of the person receiving payment under the severance agreement;
- ▶ The amount of the payment;
- ▶ That the employee or contractor was found to have engaged in sexual harassment or sexual discrimination, as applicable; and
- ▶ The date, time, and location of the meeting at which the taxing body approved the severance agreement.
- ▶ Information regarding the agreement must be published on both the taxing body's Internet website, if one is maintained, and made available to the news media (as defined by the act) for inspection and copying.

Exceptions to the 72-hour Disclosure Rule

- ▶ Interfere with law enforcement proceedings;
- ▶ Interfere with legal or administrative proceedings instigated by the complainant;
- ▶ Result in the disclosure of complainants' identities if complainants did not consent to their disclosure; or
- ▶ Endanger the life or physical safety of the complainant at issue.

Ban on Salary History Requests (City of Chicago Contractors)

- ▶ Effective: August 25, 2018
- ▶ Contractors with the City of Chicago cannot screen job applicants based on the applicants' wage or salary history.
- ▶ City Contractors must not contact applicant's current or former employer to request wage or salary history for the applicant, including benefits or other compensation.
- ▶ City Contractors must adopt a policy that includes these salary history prohibitions.