

New Illinois Expense Reimbursement Law and Other Employment Laws Effective January 1, 2019

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On January 1, 2019, an amendment to the Illinois Wage Payment and Collection Act took effect, which for the first time will require employers in Illinois to reimburse employees for certain business expenses. Illinois thus joins California, Connecticut, and Massachusetts in enacting important new employment legislation that became effective in the new year, which is summarized below.

Illinois Expense Reimbursement Law

Pursuant to the new expense reimbursement requirements, Illinois employers must now 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.” The amendment defines “necessary expenditure” to mean “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.”

Importantly, in order to obtain reimbursement, employees must, among other things, submit any necessary expenditure with appropriate supporting documentation within 30 days after incurring the expense, unless a longer time is permitted by the employer. In this way, the new Illinois legislation dramatically departs from the California expense reimbursement statute (Cal. Labor Code § 2802), which has been fertile ground for class action litigation based on supposed expenses employers were never even aware of, since the California statute does not require employees to seek reimbursement for expenses before bringing a lawsuit based on an employer’s supposed failure to reimburse them.

The Illinois legislation contains further protections for employers, including that an employee may normally be denied reimbursement where the employee has failed to comply with the terms of the employer’s established written expense reimbursement policy. For this reason, it is more important than ever for Illinois employers to establish or amend, as necessary, their written expense reimbursement policies to ensure full compliance with and protections of the new legislation.

Nevertheless, despite its protections for employers, the new Illinois legislation will inevitably create new and potentially significant challenges for Illinois employers, such as how to deal with smartphone expenses for

employees that use their smartphones for work purposes, and how to deal with educational expenses incurred by employees in connection with their jobs. Until guidance is issued by the Illinois Department of Labor or the courts, resolution of these challenges will likely be highly fact-dependent.

Other State Employment Legislation

As with Illinois, a number of other states and cities will see important employment laws become effective early in the new year. Set forth in the chart below are highlights of certain key legislative developments, all of which became effective January 1, 2019:

LAW	SUMMARY
California Salary History Ban (AB 2282)	Amends existing salary history ban (AB 168) to specify, among other things, that employers are permitted to ask the applicant's salary expectation for the position
California Non-Disclosure Agreements (SB 820)	Prohibits settlement agreements that prevent an individual from disclosing factual information related to claims of sexual assault or harassment or discrimination, including retaliation for reporting sexual harassment or retaliation
California Lactation Accommodation (AB 1976)	Amends existing lactation accommodation (California Labor Code § 1031) to provide that the private location required to be made available for an employee to express milk be a place other than a bathroom, when reasonable
Connecticut Salary History Ban (HB 5386)	Prohibits employers from asking prospective employees about past wages and compensation histories at any point during the hiring process, unless the applicant chooses to volunteer such information
Massachusetts Minimum Wage (HB 4640)	Gradually increases minimum wage in the state, from \$11 to \$15, over a five-year period (2019 through 2023), and establishes a paid family and medical leave program

Employers of all sizes who maintain operations in the above states should review their current practices to ensure compliance with these new laws, paying especially close attention to areas where state and local requirements differ from federal requirements.

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