



## ALERTS

### Illinois Department Of Labor Amends Regulations On Employer Reimbursement Of Employee Expenses

May 4, 2023

#### Highlights

Illinois employers should consider promptly reviewing their expense reimbursement policies and practices in light of the amended regulations

The regulations establish a new five-factor test for assessing whether an employer must reimburse expenses

The amended regulations also impose new record-keeping requirements on employers

Businesses with Illinois-based employees need to consider reviewing their expense reimbursement policies and practices to ensure they comply with [recent regulatory amendments](#) that went into effect on April 14, 2023. The new regulations empower the Illinois Department of Labor (IDOL) to levy fines more than double the current penalty for employer violations.

Illinois law requires employers to reimburse employees for necessary expenses incurred in connection with their employment for the "primary benefit" of the employer. Prior to the amendments, neither Illinois law itself nor the IDOL regulations provided any guidance to employers on

## RELATED PEOPLE



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how to determine whether a particular expense was incurred for the primary benefit of the employer and thus needed to be reimbursed. The amendments add more clarity and establish a five-factor test on this issue, with no single factor being determinative:

1. Whether the employee has any expectation of reimbursement,
2. Whether the expense is required or necessary to perform the employee's job duties,
3. Whether the employer is receiving a value that it would otherwise need to pay for,
4. How long the employer is receiving the benefit,
5. Whether the expense is required of the job

Employees have the right to file a claim with IDOL or a lawsuit against their employer for failure to reimburse covered expenses. Employers found to be in violation of the law will be required to pay the amount owed and a penalty of 5 percent of that amount, multiplied by the number of months between the time payment should have been made and was actually made. Previously, the penalty was only 2 percent.

As part of the amended regulations, employers are now required to maintain the following four categories of records for three years:

- All policies regarding reimbursement,
- All employee requests for reimbursement,
- Documentation showing approval or denial of reimbursement,
- Documentation showing actual reimbursement and supporting documents

Employers with employees in Illinois should consider promptly reviewing their business expense policies and practices to determine whether changes are needed based on the amendments. Among other things, an employer's expense reimbursement policy should take into account the new five-factor test in identifying the types of expenses that will be reimbursed, setting any reimbursement limits and establishing the process employees must follow to submit reimbursement requests. Employers should also consider reviewing their record-keeping policies and practices to ensure the new categories of records are all kept for three years.

For more information, please contact the Barnes & Thornburg attorney with whom you work or David Weldon at 312-214-4815 or [david.weldon@btlaw.com](mailto:david.weldon@btlaw.com).

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