

Employment Law Summary

Wage Payment and Work Hour Laws



Because You're Different

Several federal laws regulate employee wage payment and work hour requirements, including the Fair Labor Standards Act (FLSA), the Davis-Bacon Act and the Service Contract Act. In Illinois, these requirements are regulated by the Illinois Wage Payment and Collection Act (IWPCA) and the One Day Rest in Seven Act (ODRISA). The [Illinois Department of Labor](#) (IDOL) investigates violation claims and enforces these requirements throughout the state.

Wage Payments

Under the IWPCA, employers must pay their employees at least semi-monthly or bi-weekly no later than 13 days after the end of the pay period in which payable wages were earned. However, employers may pay executive, administrative and professional employees monthly. Commissions may also be paid once a month.

Upon employee request, employment or labor placement agencies must make either weekly or semi-monthly wage payments if employees earn a daily wage "in the ordinary course of business."

Employment and labor placement agencies that make daily wage payments must provide written notification to all daily wage payment employees of the right to request weekly or semi-monthly checks. These employers may provide this notice by conspicuously posting the notice at the location where the wages are received by the daily wage employees. Weekly pay must be provided no later than seven days after the end of the week in which payable wages were earned and daily pay no later than 24 hours after the day on which payable wages were earned.

Permissible Deductions from Employee Compensation

Employers are prohibited from making any deduction from their employee's wages or final compensation, unless the deduction is:

- Required by law;
- For the employee's benefit;
- Made with the employee's express written consent, given freely at the time the deduction is made;
- Required by a wage assignment or deduction order; or
- For the repayment of an outstanding debt with certain governmental organizations.

Before deducting any amount of an employee's wages for the repayment of a debt to a governmental organization, the employer must receive proof that the employee:

- Had an opportunity to dispute the debt;
- Received notice of a wage deduction order; and
- Had an opportunity to contest the order.

When making these deductions, an employer can withhold no more than 25% of the net amount of the employee's wages. The maximum deduction amount may be reduced to 15% for a debt owed to communities with populations of less than \$500,000.

If the legitimacy of a deduction is in question, an employer may withhold funds after notifying the IDOL of the deduction and its justification. The employer will then have to follow any instructions it receives from the IDOL.

In case of a dispute over wages, an employer must pay any undisputed compensation without condition and within the time frame set by the IWPCA. An employee's acceptance of this partial payment is not a waiver of his or her right to pursue the balance by legal means.

Expense Reimbursements

Employers must reimburse employees for work expenses that are primarily for the benefit of the employer. To determine whether an expense is "to the primary benefit of the employer," employers must consider:

- Whether the employee has any expectation of reimbursement;
- Whether the expense is required or necessary to perform the employee's job duties;
- Whether the employer is receiving a value that it would otherwise need to pay for;
- How long the employer is receiving the benefit; and
- Whether the expense is required of the job.

No single factor is dispositive in this analysis. The main focus of this analysis is "the extent to which the expense benefits the employer and its business and business model."

State law allows employees to file a claim against their employers with IDOL if employers fail to respond to a request for reimbursement or inform their employees that they are not entitled to seek reimbursement for a reimbursable expense.

Employers that fail to reimburse their employees during the course of employment must include unpaid reimbursable expenses in their employee's final payment.

Finally, under state law, employers must maintain for at least three years a record of:

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

Employers that through direct authorization or practice allow for reimbursement amounts in excess of their written expense reimbursement policies, specifications or guidelines may be found liable for (and ordered to pay) full reimbursements if a claim is filed.

Final Wage Payments

In the event of termination, employers must pay their employees' final compensation in full no later than the next regularly scheduled payday. If employees request it, final compensation must be paid by check and mailed to them.

In final compensation payments, employers must pay the monetary equivalent of all unused earned vacation. Employers may not take away an employee's right to payment of unused earned vacation time through an employment contract or employment policy.

Penalties

Illinois law allows employees to file a claim with the IDOL or a civil lawsuit (but not both) against employers that fail to timely pay wages, final compensation or wage supplements. Through these proceedings, employers may be required to pay administrative fees in addition to the underpayments, as well as damages equal to 5% of any unpaid amount for each month following the date of payment, while the payments remain unpaid. For claims filed as a civil lawsuit, employers may also be required to cover costs and reasonable attorney's fees.

In addition, employers that have the ability to make the payments but willfully refuse to pay, or falsely deny the amount or validity of the payment, with the intent to secure the underpayment for themselves (or another), or with the intent to annoy, harass, oppress, hinder, delay or defraud will be required to pay (upon conviction);

- For unpaid wages, final compensation or wage supplements in the amount of \$5,000 or less, a Class B misdemeanor; or
- For unpaid wages, final compensation or wage supplements in the amount of more than \$5,000, a Class A misdemeanor.

Each day of non-compliance constitutes a separate and distinct offense. Any employer or any agent of an employer who violates this law a subsequent time within 2 years of a prior criminal conviction is guilty, upon conviction, of a Class 4 felony.

Rest Periods

The ODRISA requires employers to give employees at least 24 consecutive hours of rest per calendar week. However, this requirement does not apply to:

- Part-time employees working up to 20 hours per week for one employer;
- Employees required to work in the case of a machinery or equipment breakdown or another emergency, if the employees' immediate labor is necessary to prevent injuring others, damaging property or suspending the employer's vital operations;
- Agricultural workers;
- Coal miners;
- Employees engaged in the canning and processing of perishable agricultural products, if they are employed on a seasonal basis for up to 20 weeks during any calendar year or 12-month period;
- Watchmen and security guards;
- Bona fide executive, administrative or professional employees;
- Outside salesmen; and
- Crew members of any uninspected towing vessel operating in any navigable waters in or along the boundaries of Illinois.

Meal Breaks

Under the ODRISA, every employer that requires employees to work for seven and one-half hours or more must be given at least 20 minutes for a meal period, beginning no later than five hours after the start of the work period. An additional 20-minute meal period must be provided for every additional 4.5 continuous hours of work. Meal periods do not include reasonable time spent using restroom facilities.

Employers do not have to pay employees for this meal time if the meal time is spent for something other than the employer's benefit. This requirement does not apply to employers that provide meal periods to their workers under a collective bargaining agreement.

In addition, employers are not required to provide time off for a meal if their employees:

- Monitor individuals with diagnosed mental illnesses or developmental disabilities; and
- Are required to be on call for an entire eight-hour period.

Break Time for Nursing Mothers

The Nursing Mothers in the Workplace Act requires employers to provide nursing mothers with a reasonable break time during the workday each time employees have the need to express breast milk for or nurse their infant children. The break time must, if possible, be added to a break time already provided for the employee.

Employers may not reduce their employees' compensation for time used for the purpose of expressing milk or nursing a baby.

Employers must make reasonable efforts to provide a location close to the employee's work area where the employee may take this break in privacy. Federal requirements dictate that this accommodation must be available for up to one year after the child is born and that the break's location must be:

- A place other than a bathroom;
- Shielded from view; and
- Free from co-worker and public intrusion.

An employer is not required to provide this break if it would create an undue hardship as defined by item (J) of Section 2-102 of the [Illinois Human Rights Act](#).

Hours of Work – Domestic Workers

Domestic workers must be paid for all hours worked, excluding bona fide meal breaks, rest periods and sleep periods. For domestic workers, "hours worked" includes all time during they are not completely relieved of all work-related duties, regardless of the location where the domestic work is performed. For domestic worker exceptions, employers should consult the [Illinois Domestic Worker's Bill of Rights Act](#).

A domestic worker is a person employed to perform domestic work, including:

- Housekeeping or house cleaning;
- Home management;
- Nanny services including childcare and child monitoring;
- Caregiving, personal care or home health services for elderly persons or persons with an illness, injury, or disability who require assistance in caring for themselves;
- Laundering;
- Cooking;
- Companion services;
- Chauffeuring; and
- Other household services for members of households or their guests in or about a private home or residence or any other location where the domestic work is performed.

Meal Breaks

A bona fide meal break is a period in which a domestic worker is completely relieved from duty for the purposes of eating regular meals. Ordinarily 20 minutes or more is long enough for a bona fide meal break. A domestic worker is not completely relieved from duty if the domestic worker is required to perform any duties, whether active or inactive, while eating.

Rest Periods

Similarly, a rest period is a period of time in which domestic workers have complete freedom from all work-related duties and during which they may either leave the location where the domestic work is performed without an obligation to be on call or remain at the location the domestic work is being performed for purely personal pursuits. Rest periods of less than 20 minutes must be counted as "hours worked."

Sleep Periods

A sleep period is a regularly scheduled, uninterrupted sleeping time of not more than eight hours. Domestic workers must be able to sleep during this entire period in their sleeping quarters without work-related interruptions.

Any period of interrupted sleep to perform work-related duties must be compensated. If a domestic worker cannot get at least five hours of uninterrupted sleep, completely relieved of work-related duties, that time period cannot be considered a sleep period and must be compensated as working time.

Hours of Work - Chicago

As [published](#) by the city of Chicago, the Fair Workweek Ordinance requires certain employers to provide workers with predictable work schedules and compensation for changes. Employees are covered by the ordinance if they work in one of seven "covered" industries (building services, healthcare, hotels, manufacturing, restaurants, retail, and warehouse services), earn less than or equal to \$29.35 per hour or earn less than or equal to \$56,381.85 per year, and the employer has at least 100 employees globally (250 employees and 30 locations for a restaurant). Covered employees are given:

- 14-day advance notice of work schedule
- Right to decline previously unscheduled hours
- One hour of predictability pay for any shift change within 10 days
- Right to rest by declining work hours less than 10 hours after the end of previous day's shift

Prohibited Retaliation

Employers are prohibited from retaliating against employees for making any complaint, instituting a proceeding or testifying in any proceeding or investigation under the IWPCA. Any employer that retaliates against employees in violation of the IWPCA is guilty of a Class C Misdemeanor, punishable by imprisonment for up to 30 days, a fine of up to \$1,500 or both.

Required Postings

Employers are required to post a summary of the IWPCA on their premises in a place that is accessible to all employees. The IDOL provides a model poster that employers can use to satisfy this requirement.

Additionally, employers must post a work schedule with a list of any employees that are required or allowed to work on Sundays. The schedule must be posted on the first day of each week in a conspicuous place at the employer's principal place of business. The schedule must provide a list of the employees' designated day of rest.

Finally, employers subject to ODRISA must post and maintain a poster that summarizes ODRISA requirements and information on how employees can submit a complaint. The poster must be displayed in an area where other required workplace posters are displayed. Employers may provide this poster to remote or traveling employees via email or a website that employers regularly use to communicate work-related information.

More Information

Please contact Heffernan Insurance Brokers for more information on wage and hour laws in Illinois.

Provided By Heffernan Insurance Brokers

This guide is not intended to be exhaustive, nor should any discussion or opinions be construed as legal advice. It is provided for general informational purposes only. Readers should contact legal counsel for legal advice. © 2011-2013, 2018-2019, 2021-2022 Zywave, Inc. All rights reserved.