Blog Post

Clever Title: Illinois Department of Labor Adopts New Regulations for the Illinois Wage Payment and Collection Act

Author: Kimberly Ross

Category: Employment

Suggested Key Words:

Author Short Bio: On File.

Blog Text:

In August 2014, with no discussion, press release or announcement of any kind, the Illinois Department of Labor established several new regulations to interpret and enforce the Illinois Wage Payment and Collection Act. The IDOL's website did not (and still does not) even contain information linking readers to the new regulations. As a result, many employers remain uninformed of certain requirements under the IWPCA and are therefore vulnerable to wage claims without even being aware. Below is a summary of the most significant changes with which employers must comply.

Employers Must Track Hours Worked by All Employees

The most noteworthy change is that employers are required to track the hours of all employees, regardless of whether they are "Exempt" or "Non-Exempt" under the Fair Labor Standards Act. The regulation states:

> **Regardless of an employee's status as either an exempt administrative employee, executive or professional, every employer shall make and maintain, for a period of not less than 3 years, the following true and accurate records for each employee: . . . the hours worked each day in each work week . . .** .(56 Ill. Adm. Code 300.630)

This means that while in the past, it was good business practice to have all employees (regardless of FLSA status) keep track of their hours worked in case the employer faced a wage claim and to ensure compliance with other laws, such as Illinois' meal break law found in the One Day in Seven Rest Act, now it is absolutely mandated, including for exempt employees. Although there is no specific "penalty" for not keeping track, such as a monetary fine, the new IDOL regulation states that the lack of tracking records will cause an employee to automatically prevail in a wage claim action, even if he is not able to prove the precise extent of the uncompensated work. Therefore, employers must immediately take steps to ensure that they are tracking the hours worked by all of their employees, no matter what position they hold. This can be accomplished using punch clocks, computer software, and even handwritten records completed by the employee

and maintained by the employer. Note that the regulation requires these records to be kept for at least three years.

Ban on "Use It or Lose It" Vacation Policies?

The new regulations (300.520(h)) state: "**An employer cannot effectuate a forfeiture of earned vacation by a written employment policy or practice of the employer**." Taken alone, this would seem to suggest that employers cannot mandate that if earned vacation is not used by a particular time, it will be lost. However, Section 300.520(e) still states: "**An employment contract or an employer's policy may require an employee to take vacation by a certain date or lose the vacation, provided that the employee is given a reasonable opportunity to take the vacation**." These two subparagraphs, both part of the same regulation on "Earned Vacations," would seem to contradict each other. Although the IDOL has realized the seeming contradiction, it has not yet come up with any clarification, which leaves employers having to speculate as to the meaning of the new subparagraph. In fact, in the FAQ section of the IDOL's website, the first question asked is, "Can a company have a policy that vacation must be used by a certain date or it is lost?" The IDOL's response is "yes" with a citation to the original section (300.520(e)).

With subsection (e) and the FAQ section of the IDOL's website, it would seem that either the IDOL does not intend to prohibit policies that call for losing vacation as of a certain date (such as at the end of a year or upon the employee's next anniversary), or the intent of the new section (h) was merely to reiterate longstanding policy that upon termination, an employer has to pay an employee for unused vacation time. Until the IDOL speaks further, we are not recommending that employers change vacation policies (unless they want to). If employers do want to change their vacation policy to eliminate "use it or lose it," then they can consider a policy that at least limits the amount of accrual that can occur.

Wage Notifications and Record-Keeping Requirements

Employers must provide employees notice of their rate of pay at the time of hiring, and any time it changes during the course of employment. The IWPCA requires this notice to be in writing whenever possible. We cannot imagine a scenario in which it would be impossible to provide the employee with a notification of their rate of pay. We recommend not only putting the rate of pay in writing, but also obtaining the signature of the employee acknowledging receipt.

In addition, employers must also keep records for at least three years of all vacations earned and taken during the year, including the dates on which vacations were taken and paid.

Employers must also provide a "written receipt" each pay period showing the "hours worked, pay rate, overtime pay and over time hours, gross wages, an itemization of deductions, wages and deductions year-to-date." This suggests that it is not enough

to simply make the information available to employees electronically, though it is not absolutely clear.

Employers May Not Mandate Direct Deposit or Payroll Cards

Although an employer can offer direct deposit and payroll to employees, an Illinois employer cannot require an employee to accept one of these methods. An employer must offer a check or cash option to every employee. Further, an employer may not retaliate against an employee for refusing direct deposit or payroll cards or in any manner suggest that the decision of whether to participate is anything but "voluntary."

New Deadlines for Responding to IDOL Claims

Under the new IWPCA regulations, employers must respond within the new 20-day period after being notified of the claim. A failure to do so will result in "all material allegations contained in the claim [to] be deemed admitted to be true on the "21st day following the notice of claim." This means that employers must not delay in any manner to either respond or to contact an attorney to assist them in responding.