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New law requires reimbursement of employee personal expenses

by Maureen Anichini Lemon

A recent amendment to the Illinois Wage Payment and Collection Act (WPCA) requires Illinois employers to reimburse an employee for all expenditures or losses incurred by the employee within the scope of their employment that were authorized or required by the employer. (820 ILCS 115/9.5) Section 9.5 was added to the WPCA on January 1, 2019. Since that date, employers must reimburse employees for “necessary expenditures,” defined as reasonable expenditures or losses required in the discharge of an employee’s employment duties and that inure to the primary benefit of the employer.

It is common for employers to reimburse employees at the IRS-approved mileage rate for driving their own vehicle for work. Similarly, we can expect that the new law will require employers to reimburse employees for other personal expenses. Do you require an employee to use their personal cell phone or purchase a uniform for work? Chances are you will now be required to reimburse the employee for those personal expenses, or at least for the reasonable percentage of the cost of those personal items.

This new law supplements the requirements of the Local Government Travel Expense Control Act (ECA). That law, enacted in January 2017, requires

all Illinois local public agencies, including school districts, to regulate the reimbursement of all travel, meal and lodging expenses of officers and employees. School districts have met the requirements of the ECA by adopting a resolution establishing the maximum allowable reimbursement for travel, meal, and lodging expenses.

The recent WPCA amendment applies to all types of expenses, not merely to those related to travel. The law exempts the following from reimbursement: (1) expenditures not authorized by the employer, (2) losses due to an employee’s own negligence, (3) losses due to normal wear, and (4) losses due to theft unless the theft was a result of the employer’s negligence.

Because it is a part of the WPCA, an employer who fails to reimburse an employee for necessary expenditures will be subject to the WPCA’s penalties, including attorney’s fees and liquidated damages.

To assist with compliance, each employer should adopt a written expense reimbursement policy. Employees must comply with that policy to be reimbursed. One component of the policy should be the timeframe in which an employee must submit documentation for reimbursement. The WPCA obligates employees to submit

FOIA officers beware!

by Ericka J. Thomas

Under the Illinois Freedom of Information Act (5 ILCS 140/1.1 *et seq.*), records in possession of public agencies may be accessed by the public upon written request. Over the years, FOIA has been refined and changed to address certain challenges and deficiencies and will most certainly continue to change and adapt as new issues and technological questions arise. In a recent Illinois federal case, the court considered how much transparency is too much.

In *Munn v. City of Aurora*, 2018 WL 1124424 (N.D. Ill. Mar. 1, 2018), an incarcerated felon sent a FOIA request to the City of Aurora seeking, among other things, the personnel files of numerous police officers who participated in the investigation that led to his conviction and incarceration. This inmate was serving an 88-year sentence and had strong ties to a violent street gang known as the “Latin Kings.”

The City of Aurora FOIA officer responded to the request and mailed the officers’ mostly unredacted personnel files to the correctional facility where the inmate was housed. The personnel files contained the officers’ home addresses, phone numbers, and social security numbers, as well as information about their family members. The officers were unaware that this information had been released until approximately a year later. The City later conducted an audit of its

What's new in school health issues

by Meganne Trela

While the Illinois State Board of Education's (ISBE) June 2018 guidance on the administration of medication was withdrawn and is still pending another update, the Illinois legislature passed a law allowing students to use topical sunscreen without a prescription, and the National School Boards Association (NSBA) issued guidance for school districts on drugs and substance abuse. The national guidelines address everything from the administration of medication to marijuana to student discipline and student privacy.

On the state level, the passage of Public Act 100-1176 allows students to possess and use a topical sunscreen product while on school property or at a school sponsored event without a prescription or physician's note. Prior to this legislation, sunscreen was considered "medication" and technically required a physician's note or prescription if it was going to be used by students on campus or at school-sponsored events. The legislation took effect on January 11, 2019. In addition to allowing students to use and possess sunscreen, the law allows school district personnel to assist students in applying sunscreen with parent permission. The Act further provides that liability for the application of a topical sunscreen product does not attach to school personnel except in cases of willful and wanton misconduct.

On the national side, the NSBA guidance issued on January 30, 2019, provides some insight into the challenges school personnel face daily with respect to the administration of medication, although it largely refers to state laws and guidance.

The guidance includes a chart and outline regarding how individual states are addressing student use of medical marijuana at school as well as state laws regarding medical and recreational use of marijuana. We will be addressing marijuana use by students at our upcoming School Law Conference at the Hilton Lisle on September 24, 2019.

With respect to the administration of medication other than medical marijuana, the NSBA guidance provides that trained and supervised unlicensed assistive personnel (UAP) may assist in the administration of medication under the guidance of a licensed registered nurse and when they have the required knowledge, skills, training, and composure to deliver specific health services. The national guidance suggests that the UAP should be an "ancillary health office staff member" and operate under the supervision of the school nurse -- with the school nurse auditing the medication records and conducting refresher classes throughout the year. However, the guidance also suggests that the administration of medications designated by law as a "nursing function" -- such as those that are given intravenously or subcutaneously, or those that need to be specifically measured or when the dosage is based on the symptoms of the student -- may not be delegated.

In Illinois, the Nurse Practice Act (225 ILCS 65/50-75) now allows a registered professional nurse to delegate specific nursing interventions for individuals in specific situations to unlicensed personnel based on a comprehensive nursing assessment. The comprehensive assessment includes the stability of the patient,

potential for harm, complexity of the nursing intervention, the predictability of outcomes, and the competency of the individuals to whom the nursing intervention is delegated. The nursing intervention cannot be re-delegated. The Nurse Practice Act limits the delegation of the administration of medication to unlicensed personnel to oral or subcutaneous dosage and topical/transdermal applications. Notably, the discretion to delegate is left to the registered professional nurse and cannot be mandated by the school district. Further a school district cannot discipline or take other adverse action against a registered professional nurse for refusing to delegate the administration of medication.

Because the school nurse cannot be in multiple places at once, school districts are often looking for staff who can administer medications on field trips or other outside events. In some cases, volunteers or parents with nursing qualifications may "volunteer" to serve in their nursing capacity on school events and trips. These "volunteer" nurses are different from the typical school volunteer as they are providing professional services. The NSBA guidance suggests that school districts which utilize a volunteer nurse for school events and trips should check with legal counsel and liability insurance carriers to determine the parameters of the service and what protections may apply to the volunteer nurse and school district should an issue occur. Similarly, the school district should maintain compliance with any obligations under student or health privacy laws when a "volunteer" nurse is being utilized in those situations.

Continued on page 3

Personal expenses

Continued from page 1

necessary expenditures, with appropriate documentation, within 30 calendar days after incurring the expense unless the employer's policy allows additional time (i.e., 60 calendar days). The policy should notify employees that if their supporting documentation does not exist, is missing, or is lost, the employee must submit a signed statement regarding such receipts in order to be reimbursed.

The Illinois Department of Labor has not yet developed rules implementing the new Section 9.5. For the time being, we do not know how that agency or Illinois courts will interpret Section 9.5's requirements. However, other states have interpreted similar language to include such expenses as personal computers and personal cell phones used to benefit the employer.

In *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137

(2014), a California Appellate Court ruled that an employer must reimburse an employee for using a personal cell phone for work-related calls. The employee who brought the lawsuit had an unlimited phone/data plan. Because the employee incurred no additional costs due to the work-related calls, the employer argued that there were no marginal costs to be reimbursed. While the trial court had agreed with this argument, the appellate court did not. Believing that an employer would receive a windfall by passing its operating expenses on to the employee, the appellate court ruled that an employer must always reimburse an employee 'a reasonable percentage of the employee's cell phone bill' for the mandatory use of a personal cell phone.

California courts have held that an employer's obligation to reimburse an employee pursuant to a statute

comparable to the WPCA's new Section 9.5 extends to personal cell phones, internet expenses, personal laptops, tablets and printers. While it remains to be seen whether Illinois courts will follow California's lead, Illinois employers should update their expense reimbursement policies to clarify:

- What personal items/equipment an employee may/may not use in the scope of employment;
- What expenses are reimbursable and at what amount;
- What documentation must be submitted and what to do if the documentation is unavailable; and
- When documentation must be submitted

Please contact an attorney at Ottosen Britz to assist with your policy review and revision. ■

School health issues

Continued from page 2

The NSBA guidance also addresses the use of emergency medications, including what happens when a school district does not have any unexpired emergency medications on hand due to a medication shortage during the course of an emergency. The NSBA guidance referred to a Food and Drug Administration ("FDA") guidance document that recommended that school districts keep life-saving emergency medication, such as epinephrine autoinjectors, until replacement medications are available and even if they have technically expired if the expired medication can be used under state law. Even with the FDA recommendation, school districts should be mindful of

replacing medication, especially undesignated medications that school districts have in the event of an emergency, before the expiration date.

While awaiting revised guidance on the administration of medication from the ISBE, it is important to re-visit any school plans for the administration of medication and make sure there are clear plans for students who need certain medications throughout the school day. School districts should discuss with their school nurses what happens in the event that they are unable to administer medications to students, whether any administration of medication duties can be delegated, and

which unlicensed school personnel are willing and able to administer medication in the school setting. If you have questions about the administration of medication contact an attorney at Ottosen Britz. ■

Attorney Note

On May 7 and 8, 2019, **Maureen Lemon** presented on the topic of "Prior Written Notice: Prior to What?" at the LRP's 40th Annual National Institute on Legal Issues of Educating Individuals with Disabilities, which took place in Orlando, Florida.

FOIA officers beware

Continued from page 1

FOIA procedures and discovered that this was not the first time that such personal information had been disclosed in response to a FOIA request.

In response to discovering that their personal information had been disclosed to a violent felon, the officers and their family members filed a lawsuit against the City of Aurora and the FOIA officer claiming that their civil rights had been violated. Specifically, the plaintiffs alleged that they were entitled to damages under a state-created danger theory, which allows for recovery when the affirmative action of a public body creates or increases danger to them, the public body fails to protect them from the danger, and the failure to protect shocks the conscience. Not surprisingly, the City and FOIA officer filed a motion to dismiss the lawsuit claiming that the plaintiffs had not pleaded sufficient facts to establish the elements of their claims.

The defendants also argued that the case should be dismissed because none of the plaintiffs had been harmed by the inmate. The Court stated that this argument had no merit and equated the situation to the State throwing an individual into a snake pit. The Court stated that even if the snakes don't harm the individual, but he is harmed trying to escape the pit, the danger was created by the state. In this case, the plaintiffs were harmed by having to install security systems and, in some cases, relocate.

The Court also rejected the defendants' arguments that these police officers knew they were at risk for this type of danger when they became police officers. The court noted that the officers were not on duty when the alleged danger occurred and the City, essentially, helped the inmate take his first step towards harming the plaintiffs.

Ultimately, the Court determined that the plaintiffs had sufficiently pleaded elements to establish a state-created danger claim and a "Monell" claim

against the City. A *Monell* claim involves liability for constitutional injury. In denying the motion to dismiss, the Court allowed the case to proceed to discovery and then, possibly, to trial.

Although school districts are obligated to respond to FOIA requests quickly, it is important that the FOIA officer be well-versed in what information should and should not be disclosed. Under FOIA, personal information is exempt from disclosure. (5 ILCS 140/7)) While the release of personal information about school district employees may not create the risk of danger that existed in the *Munn* case, that situation exhibits how quick and unthinking compliance with FOIA requests can not only cause violations of FOIA but can also cause legal liability for the public body. When in doubt, contact your counsel for a review of your school district's FOIA response. ■

Mark Your Calendars

Ottosen Britz

School Law Conference

Tuesday, September 24, 2019

**DoubleTree by Hilton
Lisle/Naperville**



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