

New Illinois Legislation Requires Settling Defendants in Certain Civil Litigation to Promptly Deliver Releases and Payments to Plaintiffs

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Authors: [John L. Hayes](#) (Chicago), [Taylor N. Rollinson](#) (Chicago)

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A new Illinois law aimed at preventing defendants from delaying payment after agreeing to settle a claim will impact Illinois employers that settle certain tort claims. The new section of the Civil Practice Law, “Settlement of claims; payment” (735 ILCS § 5/2-2301), will take effect on January 1, 2014. The new law will require non-governmental defendants in certain civil cases to deliver a release within 14 days after written confirmation of an agreement to settle and pay sums due under the agreement within 30 days after a plaintiff returns the executed release.

Specifically, this new law will apply to any “personal injury, property damage, wrongful death, and tort actions involving a claim for money damages, except as otherwise agreed by the parties.” Within 14 days of “written confirmation of settlement” (including email), the defendant must tender a release. The 30-day payment deadline begins to run when the plaintiff tenders the signed release. The law also includes mechanisms to protect third-party subrogation rights (such as attorney and medical liens) and recovery rights of Medicare and the Centers for Medicare and Medicaid Services.

If a defendant fails to pay the settlement amount within the prescribed time period, the plaintiff can seek judgment in the amount of the settlement, plus the costs incurred in obtaining the judgment and interest.

Impact on the Workplace

It appears that the General Assembly in passing the bill intended to help expedite the payment process in personal-injury and property-damage claims. Commentators have noted that the plaintiffs’ personal-injury bar pushed for this bill to end the long delays often encountered in collecting settlement payments from substandard insurance companies. But the language “tort actions involving a claim for money damages” means that the deadlines will apply to claims for retaliatory discharge and other tort claims that arise in the employment context such as tortious interference, defamation, and infliction of

emotional distress.

Practical Tips for Employers

Employers must be cognizant of the new deadlines when settling state law tort claims. One obvious benefit of settling claims is avoiding a potential judgment. But under the new law, an employer that fails to timely provide a release or the settlement payment risks losing that benefit. A best practice for employers is to use the “except as otherwise agreed by the parties” provision, and reach agreement with opposing counsel on manageable deadlines when negotiating a settlement—and include those agreed-upon deadlines when confirming in writing an agreement to settle (i.e., “we will tender a draft release within 21 days, and payment within 30 days after execution”). Otherwise, employers must be prepared to promptly provide both the release and payment.

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