**Section 2730.130 Liability for Contributions and Reporting of Sick Pay**

a) Sick pay is any amount paid to an employee for any period during which the employee is temporarily absent from work because of injury, sickness, or disability. Except as provided in subsection (b), sick pay paid with respect to employment by employers and third parties is wages under Sections 234 and 235 of the Act and subject to the payment of contributions. Determination of the individual or entity liable for reporting wages and paying contributions on sick pay depends on whether the sick pay is paid by the employer, by an agent of the employer, or by a third party that is not the employer's agent. Except as provided in subsection (d), the entity or individual who pays the sick pay is responsible for reporting those payments as wages and paying contributions to the Department.

b) The following payments, made to, or on behalf of, an individual or any of his or her dependents under a plan or system established by an employer that makes provision generally for individuals performing services for him or her (or for such individuals generally and their dependents) or for a class or classes of such individuals (or for a class or classes of such individuals and their dependents), are not "wages" subject to the payment of contributions:

1) payments made under a workers' compensation law;

2) payments made on account of medical or hospitalization expenses in connection with sickness or accident disability;

3) payments made on account of death;

4) payments made on account of sickness or accident disability made by an employer to or on behalf of an employee after the expiration of 6 calendar months following the last calendar month in which the employee worked for the employer.

c) If an employee receives a payment on account of sickness or accident disability that is not made under a workers' compensation law or a statute in the nature of a workers' compensation Act, the payment is not excluded from "wages" even if the payment must be repaid if the employee later receives a workers' compensation award or an award under a statute in the nature of a workers' compensation Act with respect to the same period of absence from work.

d) Except when the payments do not constitute "wages" (see subsection (b)), and except as provided in subsection (e), a third party payor is the employer for purposes of reporting wages and paying contributions, unless all of the conditions in subsections (d)(1) through (4) are met.

1) The last employer for whom the individual worked prior to becoming sick or disabled or for whom the individual was working at the time the individual became sick or disabled made contributions on behalf of the individual to the plan or system under which the individual is paid.

2) There is an agreement between the third party payor and the employer that the employer will be required to report the wages and pay the contributions.

3) The third party payor notifies the employer at least six working days prior to the end of the month following the preceding calendar quarter (or the preceding month in the case of an employer subject to 56 Ill. Adm. Code 2760.125(a)(1)) of the Social Security account numbers, employee names, and amount of sickness or accident disability payments made during the month or calendar quarter, as the case may be.

A) For the purposes of determining timeliness of the notice, the provisions of 56 Ill. Adm. Code 2765.60 shall apply;

B) A notification that contains the required information and that has been made by a third party to an employer, as required by the Federal Insurance Contributions Act (26 USC 1501 et seq.) will be sufficient notification under this Part.

4) The employer reports the wages pursuant to Section 2760.125, and includes the wages in the calculation and payment of contributions.

e) A third party making a payment on account of sickness or accident disability to an individual as agent for the employer or making such a payment directly to the employer shall not be treated as the employer with respect to the payments unless the agency agreement so provides. The determining factor as to whether a third party is an agent of the employer is whether the third party bears any insurance risk.

1) If the third party bears no insurance risk and is reimbursed on a cost plus fee basis, the third party is an agent of the employer even if the third party is responsible for making determinations of eligibility of the individual employees of the employer for payments on account of sickness and accident disability.

2) If the third party is paid an insurance premium and not reimbursed on a cost plus fee basis, the third party is not an agent of the employer, but the third party is treated as the employer, as provided in subsection (d).

f) For purposes of subsection (b), a dependent of an individual is the individual's husband or wife, children and any other member of the individual's immediate family as defined in 18 USC 115(c)(2).

g) Except for any wages paid to an individual for services actually performed in employment of the third party payor, a third party payor that is liable for purposes of reporting wages and paying contributions for payments made on account of sickness and accident disability is not the last 30-day chargeable employer for purposes of Section 1502.1 of the Act.

(Source: Amended at 43 Ill. Reg. 6442, effective May 14, 2019)