CHRISTIAN MANAGEMENT ASSOCIATION

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Employees' Expense Reimbursement Claims

Recently the question was asked as to whether or not an organization operating in California can have a policy that precludes reimbursing employees' expense claims not turned in within a mandated time frame.

While the law may differ from state to state, in California the labor code is very specific on this issue. Section 2802 states: "An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties…." This law also covers anyone who was misclassified as an "independent contractor."[1] Employees must be reimbursed for all necessary expenses of the employer.

We recommend employers have a written policy regarding when expense reports must be submitted that meets the IRS standard of an "accountable" reimbursement plan. The typical standard is once a month. Set time frames for the submission of expenses, and guidelines for employees who travel, and follow those guidelines consistently.

When late submissions become a problem, the better practice is to discipline an employee for submitting late claims and remind the employee that reimbursements paid after the maximum standards established under your "accountable" plan will have to be added to their annual IRS Form W-2 as taxable wages.

Reasonable Business Expenses

Employees are entitled to be reimbursed only for reasonable business expenses, so employers can require that hotel and food costs be contained at a certain amount, and airfare be coach versus first class. If an employee chooses the higher level of travel, he/she can be required to pay the difference between the employer guidelines and the higher amount.

Reimbursement Time Frame

The code does not specify a time period for the submission of expenses. However, the current statute of limitations governing the submission of expenses is four years. Additionally, California law is not specific on when the employer is required to reimburse the employee. When an employee leaves his/her job, expenses are not required to be paid out in the same time frame as the final paycheck, but we recommend employers should not unnecessarily delay payment. It is best to create specific policies regarding employees submitting expenses, and employers paying them. Both sides should have firm guidelines, and adhere to them accordingly.

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[1] It does not matter if the error was made by an honest misunderstanding or intentionally. It also does not matter if the misclassification was made by the employer or the employee. It is the employer's obligation to show that all expenses incurred by its employees have been fully reimbursed because Labor Code Section 2804 forbids an employer to permit an employee to waive the right to reimbursement.

Accountable Plans

To be an accountable plan, your employer's reimbursement or allowance arrangement must include all of the following rules:

1. Your expenses must have a business connection – that is, you must have paid or incurred deductible expenses while performing services as an employee of your employer.
2. You must adequately account to your employer for these expenses within a reasonable period of time.
3. You must return any excess reimbursement or allowance within a reasonable period of time.

An excess reimbursement or allowance is any amount you are paid that is more than the business-related expenses that you adequately accounted for to your employer.

Reasonable period of time

The definition of reasonable period of time depends on the facts and circumstances of your situation. However, regardless of the facts and circumstances of your situation, actions that take place within the times specified in the following list will be treated as taking place within a reasonable period of time under current federal law.

- You receive an advance within 30 days of the time you have an expense.
- You adequately account for your expenses within 60 days after they were paid or incurred.
- You return any excess reimbursement within 120 days after the expense was paid or incurred.
- You are given a periodic statement (at least quarterly) that asks you to either return or adequately account for outstanding advances and you comply within 120 days of the statement.

If your employees meet the rules for accountable plans, you should not include any reimbursements as income in box 1 of their Form W-2. The employer makes the decision whether to reimburse employees under an accountable plan or a non-accountable plan. Employees who receives payments under a non-accountable plan cannot convert these amounts to payments under an accountable plan by voluntarily accounting to the employer for the expenses and voluntarily returning excess reimbursements to the employer.

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