



Fine Print

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ACCOUNTABLE BUSINESS EXPENSE REIMBURSEMENT PLANS

By Jason Rothman

Most employers do not expect employees to cover business expenses. Typically, employers will reimburse employees for business expenses. However, there are important tax issues to consider determined based on whether the reimbursement arrangement is an “accountable plan” or “non-accountable plan.”

To be an accountable plan, an employer’s reimbursement arrangement must require the following:

1. Expenses must have a business connection and must be incurred while performing services as an employee of the employer.
2. The employee must adequately account to the employer for the expenses within a reasonable period of time.
3. Any excess reimbursement or allowance must be returned to the employer within a reasonable period of time.

To “adequately account” for expenses, an employee must give the employer a written record. The employee must record each expense at or near the time it was incurred. The employee also must provide evidence of the business expense (such as receipts, cancelled checks, and bills).

The definition of “reasonable period of time” depends on the facts and circumstances of the situation. The IRS has issued safe harbors treating certain actions as taking place within a reasonable period of time (e.g., adequately accounting for an expense

within 60 days).

If an employer’s reimbursement arrangement is an “accountable plan,” the employer should include the reimbursements in Box #12 of the Form

W2. If the employer does this, the employee will not have to pay income or employment taxes. Furthermore, the employer will not have to pay employment taxes on the reimbursed amount.

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HELPFUL HINTS FOR OFFICE HOLIDAY PARTIES

By James B. Yates

Q: As we approach the holidays, many people will soon be attending office parties. What issues should employers keep in mind when planning these parties?

A: Many employers give office holiday parties for employees or non-employees such as vendors and customers. However, recent years have seen an increase in litigation brought against employers to recover for injuries to employees or those injured by the actions of an intoxicated employee.

Q: What sort of issues are associated with these events?

A: While well-intentioned, these events can be a source of claims, including dram shop law violations, harassment claims, workers’ compensation claims, and wrongful death actions.

■ Dram shop laws allow a person who is injured as the result of another’s intoxication to sue the individual or business that sold the alcohol. Generally, employers are not liable under dram shop laws for merely hosting a party. However, liability may be extended if the intoxicated person is a minor or if the employer knew an employee was intoxicated and continued to serve the employee alcohol.



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A non-accountable plan is a reimbursement or expense allowance arrangement that does not meet all three requirements of an accountable plan. Any reimbursement paid to any employee under a non-accountable plan must be reported in Box #1 of the employee's Form W2 as taxable wages. The employer must withhold income taxes and employment taxes for reimbursements made under a non-accountable plan. Furthermore, the employer must pay the employer's portion of payroll taxes on those amounts.

Reimbursing employees for business expenses under an accountable plan is better for both employers and employees from a tax perspective than reimbursing employees under a non-accountable plan. An employer's properly adopted and memorialized (e.g., through minutes) employee expense reimbursement accountable plan allows employees to avoid income and employment taxes on reimbursements and allows the employer to be exempted from its portion of employment taxes.

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IN THE HOPPER

State legislation that could affect small business

New legislation, which became effective September 2, 2004, establishes minimum medical requirements for filing certain asbestos claims, specifies a plaintiff's burden of proof in tort actions involving exposure to asbestos, establishes premises liability in relation to asbestos claims, and prescribes the requirements for shareholder liability for asbestos claims under the doctrine of piercing the corporate veil.

From the OSBA Office of Government Relations.

Web site resource for small businesses:

To learn about programs offered by the U.S. Dept. of Labor's Office of Small Business, go to: <http://www.dol.gov/osbp>.

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■ Harassment claims, and particularly sexual harassment claims, may result when one employee (or even a non-employee) becomes intoxicated and makes inappropriate advances or comments toward another employee.

■ Workers' compensation covers only employee injuries sustained within the scope of employment. If an employee is intoxicated, the injury does not necessarily result from actions taken within the scope of employment. If an employer maintains a post-accident drug testing policy and otherwise complies with a recently passed Ohio statute addressing drug testing issues, there will be a presumption that the injury is not compensable. If attendance at an office party is mandatory, however, some injuries that involve alcohol may be considered work related, and therefore, compensable.

■ Wrongful death actions may be brought by the estate of a deceased employee to recover from the person who caused the death. An employer who was responsible for the employee's intoxica-

tion while within the scope of employment may be sued for wrongful death.

Recent years have seen an increase in litigation brought against employers to recover for injuries to employees or those injured by the actions of an intoxicated employee.

Q: How can employers protect themselves?

A: All employers should have a drug and alcohol policy stating that employees will be subject to discipline, up to and including termination, for the use, sale, or possession of alcohol or illegal drugs on company premises or while working. As previously noted, that policy should comply with the new legislation addressing drug testing. The policy may permit alcohol to be consumed at employer-sponsored functions, but the policy also should specifically state that at no time should alcohol be consumed to excess. Many employers choose not to serve alcohol at holiday parties or have the parties during the day to reduce the expectation that alcohol will be served. For holiday parties where alcohol will be served, employers should:

1. remind employees about the company alcohol policy;

2. remind employees about the company harassment policy;

3. limit the availability and/or amount of time that alcohol is served;

4. have a cash bar to avoid using company funds for alcohol;

5. not allow supervisors to buy drinks for employees;

6. hold events at sites not affiliated with the employer;

7. provide cabs or establish a designated driver program;

8. not make attendance at holiday parties mandatory and make sure that employees who attend know they may leave at any time.

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