



Pay the IRS Mileage Rate or Risk Paying A Whole Lot More!

Question: Can I pay my employees less than the full IRS Mileage rate?

Answer: An employer may reimburse an employee for mileage incurred when using his/her personal vehicle on company business at a rate lower than the IRS rate, however, in doing so the employer accepts certain liability for any loss or damage to the employee's automobile that occurs while he/she is on company business.

The California Labor Code requires employers to reimburse employees for all necessary expenditures incurred by employees. This includes mileage expenses plus damage to an employee's vehicle while being used for company business.

Section 2802(a) An employer shall indemnify his or her employee for all necessary expenditures of losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.

The Division of Labor Standards Enforcement (DLSE), in its Enforcement Policies and Interpretations Manual says:

IRS Mileage Allowance. DLSE has opined that use of the IRS mileage allowance will satisfy the expenses incurred in use of an employee's car in the absence of evidence to the contrary.

Award of Attorney's Fees and Interest. Both interest and attorney's fees incurred in claims and actions to enforce 2802 are recoverable and may be awarded by either the courts or the Labor Commissioner to an employee (but not the DLSE or employer) who prevails in such an enforcement claim or action. (Labor Code § 2802(c)).

Note: The provisions of Labor Code § 2800 and 2802 may not be altered or waived by private agreement. (Labor Code § 2804).

The DLSE applies Section 2802 to automobile expenses, including the costs of any loss or damage to an employee's automobile that occurs while he is on company business. The Division takes the position that the payment of a reasonable mileage reimbursement (the IRS rate) covers all reasonable operating costs incurred by the employee in the operation of a personal vehicle for business purposes. In other words, when an agreement exists for a reasonable mileage reimbursement, the employer can insist that an employee pay for insurance to cover all or a portion of the cost of any potential loss or damage incurred when the employee uses a personal automobile for business purposes.

What if an employer doesn't pay a reasonable mileage reimbursement?

In such a case, the Division would require the **employer** to reimburse the employee for the actual costs incurred in operating the vehicle in the service of the employer. Those costs would include losses due to accident or theft while the vehicle is being used for business purposes. Further, an employer cannot avoid the liability created under Labor Code Sections 2802 and 2804 by insisting that the employee pick up a portion of the cost or insure against a loss.

Bottom line: Reduce your liability. Why risk paying for an accident, theft or other damages? Just pay the IRS mileage rate!

Mileage Rates and Delivery Drivers

Since 2014, “service charges” and “delivery fees” will not be classified as tips by the IRS, instead they will be considered wages. Many restaurants automatically add tips to the bill of a party of six or more, and casual eateries such as pizza parlors have their own variations of tip collections, such as delivery fees.

An employee who receives delivery fees in lieu of a mileage reimbursement will need to have those delivery/service charges calculated into their hourly rate. This will increase that employees’ overtime rate.

<i>Example:</i>	
<i>Employee Works 9 hours in a Day</i>	
<i>Delivery Charges: \$3/delivery, 10 deliveries</i>	
Regular Hourly Rate: \$15 x 8 hrs	\$120.00
<u>Delivery Charges:</u>	<u>\$30.00</u>
Total Regular Wages:	\$150.00
Regular wages divided by 8:	\$18.75
Overtime Hourly Rate (\$18.75 x 1.5):	\$28.12
Total Wages (\$150.00 + \$28.12):	\$178.12

Bottom Line: Best practice is to pay your employee a mileage reimbursement for using their vehicle. Remember that mileage reimbursements, so long as you keep a record of actual miles driven, is a business expense and not taxable to the employee nor the company.

For more information or assistance please call CEA at 800.399.5331
or visit our website at: www.employers.org