

DEPARTMENT OF INDUSTRIAL RELATIONS  
DIVISION OF LABOR STANDARDS ENFORCEMENT

## LEGAL SECTION

45 Fremont Street, Suite 3220  
in Francisco, CA 94105  
(415) 975-2060

MICHAEL S. VILLENEUVE, Staff Counsel

November 5, 1998

William D. Becker, Esq.  
Ballard, Rosenberg & Golper  
10 Universal City Plaza  
Sixteenth Floor  
Universal City, CA 91608-10973RE: Labor Code §2802 - Requiring Employees to Purchase  
Excess Automobile Insurance

Dear Mr. Becker:

Chief Counsel, Miles E. Locker, has asked me to respond to your letter dated July 13, 1998, regarding the above referenced matter. You ask whether Labor Code § 2802 requires your client to reimburse employees for automobile insurance premiums for coverage above the legal minimum. You state that your client "is preparing to implement a policy which requires employees who regularly drive their personal vehicles for business purposes to obtain 100/300 insurance coverage (meaning that they are covered for \$ 100,000 per injured person up to a maximum of \$300,000 per incident)." which is "higher than that required by California state law," which I take to mean coverage required the Motor Vehicle Code.

Labor Code §2802 states in relevant part, that:

"An employer shall indemnify his employee for all that the employee necessarily expends or loses in direct consequence of the discharge of his duties as such, or of his obedience to the directions of the employer...."

Section 2802 has been interpreted to require indemnification for all expenses incurred in the scope of employment. *Devereaux v. Latham & Watkins* (1995) 32 Cal. App. 4th 1571. The purpose of the statute is to protect employees from suffering any expense as a direct consequence of the performance of the employee's duties. *Grissom v. Von's Companies, Inc.*, (1991) 1 Cal. App. 4th 52.

As long as the employer reimburses the employee for the cost of the insurance and does not dictate which company supplies the insurance,<sup>1</sup> the Labor Code does not prevent the employer you describe from requiring its employees to obtain insurance coverage beyond the legal minimum. Those expenses which an employer causes an employee to incur, however, must be reimbursed, since Labor Code § 2802 requires that the employer indemnify the employee for such loss or expenditure which is in direct consequence of the discharge of his duties. Thus the question becomes whether a "reasonable" mileage reimbursement covers operating expenses incurred.

The application of the Internal Revenue Service mileage allowance as a deduction from income for taxation purposes, which has been previously viewed by DLSE as "reasonable" as a measure of expenses, is not dispositive with respect to the issue of indemnification of expenses actually incurred. The IRS figure is a national average of the costs of operating a motor vehicle without respect to initial cost of purchase or lease (which affects depreciation allowance), repairs and maintenance, fluctuating fuel costs, and, of course, cost of insurance, which varies widely state to state, and locality to locality.

Prior enforcement of Section 2802 where employers paid less than the IRS mileage rate viewed such compensation as being rebuttably presumed not to comply with Section 2802. Thus, if the employer could prove that the actual costs incurred by the employee were less than the IRS rate, no violation of Section 2802 occurs if the employee is indemnified for actual expenses incurred. Conversely, payment of the IRS allowance rate confers no irrebuttable presumption of compliance with Section 2802. Rather, the burden shifts to the employee to prove that actual expenses incurred exceeded the amount tendered by the employer. If the employee successfully demonstrates that additional insurance coverage raises the cost of operating the vehicle beyond the IRS mileage figure, the employer will be obligated to cover such costs. Naturally this determination must be made on a case by case basis, as insurance costs will vary depending on the domicile and use locations.

Thus while the Division generally finds the IRS mileage rate as reimbursement to be reasonable, no overall exemption from liability under Section 2802 can be given. Since the IRS mileage rate is based, in part, on average costs of insurance premiums as applied to drivers with average driving records, a particular

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<sup>1</sup> Labor Code Section 450 prohibits employers from compelling their employees from patronizing **any person** in the purchase of anything of value. Thus, coupled with Section 2802, absent reimbursement, violations of both sections would occur.

Mr. William D. Becker  
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driver may be able to demonstrate that higher costs were necessarily incurred in the purchase of such insurance.

Thank you for your interest in California labor law.

Sincerely,

A handwritten signature in cursive script that reads "Michael S. Villeneuve". The signature is written in black ink and is positioned above the printed name and title.

Michael S. Villeneuve  
Staff Counsel

cc: Miles E. Locker, Chief Counsel