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Think Twice: Do Reimbursable Expenses Impact Wages?

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Many employees incur expenses personally in connection with their employment. Employers typically have a policy concerning employee reimbursement for business-related expenses. As a result, generally speaking, reimbursable expenses are not considered wages.

However, when an employer requires an employee to incur business-related expenses without reimbursement, it may violate New Jersey Wage Payment Law (“NJWPL”) and/or the Fair Labor Standards Act (“FLSA”).

Recently in **Sands v. Board of Review**, the Appellate Division was confronted with a plaintiff who had been required to use his personal vehicle for work-related purposes for which he sought reimbursement for the costs associated with that use. His employer declined to reimburse the expenses. The Appellate Division found that the employer’s requirement that the employee use his personal vehicle for work-related purposes without reimbursement was effectively a transfer of the employer’s own operating expenses to the employee and thus a diversion of his wages^[1].

Similarly, Papa John’s was sued in a class action matter pursuant to the FLSA because it failed to reasonably reimburse its delivery drivers, who are **required to use their personal cars** to deliver pizza, for the “approximate costs of the business use of their vehicles”, resulting in drivers earning less than minimum wage. Papa John’s method to calculate reimbursement rates led to delivery drivers receiving an “unreasonably low rate” that is beneath “any reasonable approximation of the expenses they incur.” The unreimbursed expenses Papa John’s delivery drivers incur during their driving shifts causes their overall wages to dip below the minimum hourly wage. The class action settled for \$20 million. It should be noted the IRS annually publishes the standard mileage rate to use a vehicle for work. Therefore, the cost of same is directly tied to the number of miles the vehicle is driven for work purposes. For example, the current reimbursement rate is \$0.67 per mile driven.

By contrast, in **In re Morgan Stanley Smith Barney LLC Wage and Hour Litigation**, a matter involving commissioned employees who paid for a significant portion of their own expenses such as postage, client dinners and seminars, the United States District Court for the District of New Jersey determined that the employer’s refusal to reimburse such expenses was not a violation of NJWPL. While there was a dispute as to whether the employer **required** the employee to incur the expenses thus making the expenses reimbursable, the Court found that because NJWPL expressly concerned instances of employers directly reducing an employee’s paycheck, rather than an employer’s failure to reimburse employees’ expenses, no violation existed. While the Court found the alleged reimbursable expenses in question were not wages, it did allude that an alternative direct wage deduction claim may have been available to the plaintiffs that they simply did not pursue.

Takeaway: Courts have historically been inconsistent in analyzing whether the reimbursement of expenses constitutes a diversion or withholding of wages. Additionally, not providing the correct amount of reimbursement may lead to minimum wage issues. Therefore, it is important to be mindful of the various factors impacting reimbursement of employee expenses and to think twice before not reimbursing employees for certain expenses.

If you need assistance concerning reimbursement of employee expenses or other employment law matters, please reach out to [Meghan Chrisner-Keefe](#) or anyone on the [Employment Law team](#) at Wilentz.

[1] Wages are defined as the direct monetary compensation for labor or services rendered by an employee, where the amount is determined on a time, task, piece, or commission basis. N.J.S.A. 34:11-4.1. Employers are prohibited from withholding or diverting any portion of an employee's wages unless required or empowered to do so by law, or as enumerated in N.J.S.A. 34:11-4.4.

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