

Newsday

Employees don't have a right to car reimbursement

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By Carrie Mason-Draffen

DEAR CARRIE: I work for a staffing company, which requires that I use my car to visit clients. But my company doesn't give me a car allowance, nor does it give me any money toward the cost of operating my car, such as the 50 cents per mile required by law. If I am involved in an accident while visiting clients, is the company liable? A co-worker on a visit saw a car sideswipe her parked vehicle. The driver fled the scene, and because my co-worker was unable to get a license plate number, she could not file a claim with the other driver's insurance company. She got estimates for the repairs and asked our human resources department if the company would pay. HR in turn asked the legal department, which said the company wasn't liable. Can this be true? If one of us is injured in an accident while on company business, would the company be liable?

Unpaid Wear and Tear

DEAR UNPAID: I'll start with the mileage question first because it's the simplest. I need to correct you on two points.

First, the Internal Revenue Service's maximum deductible rate for business mileage is now 58.5 cents per mile, an amount that took effect on July 1 to run through the end of the year. Normally rate changes take effect on Jan. 1 and run to Dec. 31, and the IRS did announce a new rate of 50.5 cents last Jan. 1 but raised that in midyear to the 58.5 cents because of surging gas prices.

Second point: No law requires your employer to pay you anything for using your car for business, even though the company requires you to do so.

"Federal and New York State law does not require reimbursement for gasoline and related expenses incurred when an employee uses his or her own vehicle while working," said employment attorney Carmelo Grimaldi, a partner at Meltzer, Lippe, Goldstein & Breitstone in Mineola.

The IRS business mileage rate is set for tax purposes. If an employer were to reimburse you less than 58.5 cents per mile, you might be able to deduct the difference as an expense on your income taxes. If the company were to pay you more than the 58.5 cents, you'd have to declare the extra amount as income.

But the bottom line is that the company doesn't have to pay you for mileage. Every law, however, has exceptions.

If your employer requires you to use your car and you are a nonexempt employee - which generally means you are paid by the hour and must be paid at least the minimum wage - your rate of pay must equal at least \$7.15 an hour, the New York State minimum, once you subtract your weekly vehicle business expenses from your gross pay, said employment attorney Richard Kass, a partner at Bond, Schoeneck & King in Manhattan. But if your employer doesn't care how you get from place to place, whether by car or public transportation, "the rule would not apply, and the employee is out of luck," Kass said.

You wouldn't have any recourse on the minimum wage regulation, either, if you are exempt, meaning you are exempt from minimum wage. Exempt employees fall into the executive, professional, administrative and outside-sales categories.

If you were injured while driving on business, both lawyers said you would be covered by workers' compensation benefits.

"If an employee is injured on the job, whether in a car or not, she will be covered by workers' compensation insurance," Kass said.

But Grimaldi points out that workers' comp covers injuries, not damages to a vehicle or other property.

Workers' comp insurance "provides cash benefits and/or medical care for workers who are injured or become ill as a direct result of their job," Grimaldi said.

Even if you have no recourse on being reimbursed for any damage to your car, Kass advises you to ask the company to double-check its insurance policy to make sure employees aren't covered by property losses or damage while workers are on company business.