CUPE

THE FACTS

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Bargaining Benefits – Vehicle Allowances

Introduction

Many employers require CUPE members to use their personal vehicle to carry out their job related duties and responsibilities. CUPE does not recommend the use of personal vehicles for work related activities. That's because liability issues for CUPE members can be significant, especially when passengers are children. It can also be argued that reimbursements paid by the employer to cover the costs of using personal vehicles do not fully cover the costs associated with owning and operating a vehicle.

The purpose of this fact sheet is to provide CUPE members, bargaining teams, and staff with information on bargaining language related to the use of personal vehicles on employer related business. There will be discussion of some of the pitfalls in negotiated language that can result in vehicle allowances considered as taxable income by the Canada Revenue Agency (CRA). In order to avoid those pitfalls, the model language will contain specific wording so that vehicle allowances paid to CUPE members would be within the allowable limits of what the CRA considers a non-taxable benefit.

Bargaining "No Use of Personal Vehicles"

There are a number of reasons that CUPE does not recommend the use of personal vehicles for work related activities. First, liability issues can be significant, especially when members are required to transport children, as is the case with child protection workers.
Second, vehicle allowances paid by the employer to members might not fully cover the costs associated with owning and operating a vehicle such as vehicle wear and tear, depreciation, maintenance, tires, insurance, license and registration, financing expenses, and the recent high costs of gasoline. And third, in the case of a motor vehicle accident, the employee would have to pay the insurance provider the costs associated with one or more deductibles. In a worst case scenario the employee's vehicle could even be written off.

As previously stated, CUPE does not recommend the use of personal vehicles for employer related business. The following recommended language obligates the employer to provide vehicles to workers on employer business, at no cost to the worker:

> *No bargaining unit employee will be required to use their personal vehicle for employer related business and activities. The employer will provide bargaining unit employees with a vehicle at no cost to the employee when the employee requires access to a vehicle for employer related business and activities.*

You might also want to consider bargaining language that obligates the employer to pay all fuel related costs (gasoline, oil) and maintenance, including unlimited towing, in the event the vehicle breaks down, has a flat tire, or requires repairs while in the worker's possession. Language that requires the employer to furnish workers with a credit card or that requires workers to provide receipts for reimbursement of fuel and other costs should also be considered.

Expenses that arise through legislation should also be paid by the employer including emissions testing as a requirement for obtaining vehicle registration and license plates, and the mandatory requirement for winter snow tires, as is the case in Quebec.

Also consider language that requires the employer to cover all "loss of use" costs, such as taxi fares and car rental fees, in the event the worker's personal vehicle is in need of repairs. Some insurance policies provide "loss of use" coverage. Consider language that obligates the employer to pay for all "loss of use" expenses or, language that requires the employer to reimburse employees the full costs of purchasing "loss of use" upon proof of purchase (i.e. receipts).

The language should also make clear that the employer will pay all associated fees and expenses related to deductibles, damages, vandalism, and "loss of use" coverage regardless of whether or not the employee is at fault in causing or contributing to the motor vehicle accident.

Useful Tip:

If the employer refuses to pay for costs associated with owning and operating a vehicle then ask your employer to provide a T2200 income tax form, *Declaration of Conditions of Employment*. The T2200 form allows workers to deduct employment expenses, including vehicle expenses, from her/his income. But in order for you to deduct expenses your employer must first fill out the form.

Bargaining Mileage/Kilometer Allowances

In some workplaces, having access to a personal vehicle for employer related business is a condition of employment and is contained within the collective agreement. Bargaining units that find themselves in this situation may want to bargain reimbursements for the costs of owning and operating a vehicle on employer business, if such language is not already found in the collective agreement.

The maximum allowable reimbursements for operating a personal vehicle on employer business, also known as the kilometer rate, are established by the Federal Finance Department and are published each December.

In order to be considered a non-taxable benefit, your bargaining unit's negotiated kilometer rate must meet the criteria established by both the Federal Finance Department and the Canada Revenue Agency for determining a non-taxable vehicle allowance. That criteria is met by bargaining a per kilometer rate observing the maximum limits imposed by Federal Finance.

The following recommended language obligates the employer to reimburse bargaining unit members at the maximum allowable rate set by the Federal Finance Department:

> *All bargaining unit employees who are required to use their personal vehicle for the employer's business will be reimbursed for all kilometers driven on employer business at the maximum Automobile Deduction Limits and Expense Benefit Rates for Business kilometer rate published annually by the Federal Department of Finance.*

If there are any increases to the Department's Automobile Deduction Limits and Expense Benefit Rates for Business kilometer rate during the term of the collective agreement, then bargaining unit employees will be reimbursed at the new maximum kilometer rate within one (1) pay period of the revised rate being made public.

According to the Canada Revenue Agency (CRA), an automobile allowance is taxable unless it is a reasonable per-kilometer allowance. CRA considers a reasonable allowance to be equivalent to the maximum kilometer rate.

Useful Tip:

The 2009 maximum rate for *all provinces* is 52 cents per kilometer for the first 5,000 kilometers driven, and 46 cents for each additional kilometer. The 2009 maximum rate for the Yukon Territory, Northwest Territories, and Nunavut is 56 cents for the first 5,000 kilometers driven and 50 cents for each additional kilometer.

Employers are not prevented from paying more than the maximum rate. But, the onus is on the employer and the worker(s) to justify a rate higher than that prescribed by the Federal Finance Department. If the higher per kilometer rate can be justified the vehicle allowance can be considered non-taxable income. *Bargaining teams should consider gaining advice on bargaining rates in excess of the maximum limit before negotiations begin.*

A powerful argument to present to the employer in bargaining is that the negotiated kilometer rate must be equivalent to the maximum rate as established by Federal Finance. That's because vehicle allowances that are lower *or* higher than the maximum rate are considered "unreasonable" by the CRA and are subject to taxation, although we are not aware of a situation in which this has occurred.

Bargaining an Escalator Clause

The benefit of bargaining an escalator clause is that it provides for more frequent adjustments to the kilometer rate based on changes to the *Private Transportation Index* (PTI) of your province. The PTI is a component of the *Consumer Price Index* (CPI) and is published monthly.

The Consumer Price Index (CPI) is a measure of the rate of price change for goods and services bought by Canadians. It is the most widely used indicator of price changes in Canada. The eight major components of the CPI are "Food", "Shelter", "Household operations and furnishings", "Clothing and footwear", "Transportation", "Health and personal care", "Recreation, education and reading", and "Alcoholic beverages and tobacco products".

You will need the following information to calculate adjustments to the kilometer rate based on changes to your province's Private Transportation Index:

1. Maximum kilometer rate found in your current collective agreement.

2. Most recent Private Transportation Index for your province published by Statistics Canada. (You can find the Index online at http://www.statcan.ca/start.html)

We will use the PTI for Manitoba for the period April 2008 to April 2009 (year over year) as an example of how to calculate adjustments to the kilometer rate.

Consumer Price Index, transportation, by province (monthly) (Manitoba)					
	April 2008	**March 2009**	**April 2009**	**March 2009 to April 2009**	**April 2008 to April 2009**
	2002=100			% change	
All-items	**112.7**	**113.0**	**113.7**	**0.6**	**0.9**
Transportation	119.6	108.4	**109.0**	0.6	-8.9
Private transportation	119.8	107.1	**107.8**	0.7	-10.0
Purchase, leasing and rental of passenger vehicles	95.8	87.9	**87.2**	-0.8	-9.0
Operation of passenger vehicles	144.1	126.6	**128.6**	1.6	-10.8
Public transportation	117.1	121.2	**121.9**	0.6	4.1
Local and commuter transportation	116.4	121.5	**121.5**	0.0	4.4
Inter-city transportation	117.4	121.2	**122.1**	0.7	4.0
Source: Statistics Canada, CANSIM, table (for fee) 326-0020 and Catalogue nos. 62-001-X and 62-010-X. Last modified: 2009-05-20.					

Note the row titled *Private Transportation – that is the PTI*. You can see that for the period March 2009 to April 2009 the PTI increased 0.7%. Now, calculate your local's new kilometer rate by multiplying the Private Transportation Index by the maximum kilometer rate found in your current collective agreement. Let's assume a kilometer rate of $0.37 cents per kilometer:

0.7% X $0.37 cents per kilometer = $0.00259 cents per kilometer

So, the local's new kilometer rate would increase by $0.00259 cents:

$0.00259 + $0.37 = $0.37259

In this example, there would be no change in the local's bargained kilometer rate of $0.37. The benefit of bargaining an escalator clause is that it allows the local to monitor changes to the PTI and to make adjustments to the kilometer rate. The calculation can be done monthly, every six months, or quarterly to reflect ongoing changes to the PTI.

Avoiding the Pitfalls in Negotiated Language

Avoiding the pitfalls in bargaining vehicle allowances is important because we don't want to be in a position whereby what we've bargained is actually viewed as income by the CRA and therefore a taxable benefit – doing so will actually take money out of members' pockets. Let's look at an example.

Useful Tip:

Remember that original receipts are required in the event you are audited by the CRA. It is recommended that you keep a file of all your employer related expenses, including vehicle allowance reimbursements, for a period of 7 years in the event that you are audited.

Example

In addition to bargaining a kilometer rate, a local union has bargained a flat rate amount of $20.00 per month which is payable to all employees who use their personal vehicle for employer business. The CRA has ruled the flat rate amount of $20.00 is income and is therefore a taxable benefit. The reason the flat rate amount is taxable is because it does not meet the criteria established by both the Federal Finance Department and the Canada Revenue Agency for determining a non-taxable vehicle allowance; that criteria is met by bargaining a per kilometer rate observing the maximum limits imposed by Federal Finance.

Recommended Solution

Locals that have bargained a flat rate vehicle allowance might want to consider converting the flat rate to a cents per kilometer amount. To do this you will need to find out the average monthly kilometer usage for *all* bargaining unit members (this information may be available from the employer). In this example, let's suppose that the average monthly kilometer usage for all bargaining unit members is 333 kms. Now, do the calculation:

$20.00/worker/month ÷ 333 kms (average usage/worker/month) = $0.06

So, in this example, a total of 6 cents would be added to the current kilometer rate. If the current kilometer rate is 43 cents, then the new kilometer rate would be 49 cents/km.

Useful Tip:

Note that the maximum automobile allowance for 2009 is 52 cents for the first 5,000 driven and 46/km thereafter. In other words, amounts over and above 52 cents/km may be considered as taxable income by the CRA.

Bargaining units can bargain a flat rate vehicle amount if they so choose. But know that whatever flat rate you bargain is subject to taxation, which means fewer dollars in members' pockets.

In order to avoid potential disputes in future bargaining, the parties might want to consider creating a signing note to be retained in the bargaining file that states that the conversion from a flat rate amount to a cents per kilometer amount was not intended to reduce the benefit, but rather to maintain the benefit in a way that creates more consistency with the Income Tax Act. Such a document would capture the intent of the parties at the time of bargaining, and have the potential to settle future disputes (e.g. new management bringing a new interpretation to the language).

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