Employees Working From Home: Who Bears The Expense?



It has been years since Covid-19 forced many people to suddenly shift to working from home. One major benefit of this arrangement is the potential for employers to save on considerable overhead expenses ‘ for example rent and internet connectivity in office buildings. It is important to ask, however, whether these costs are being eliminated, or simply shifted to employees. If it is the latter, employers should consider whether they are inadvertently contravening the established law in British Columbia.

Employment Standards

The *Employment Standards Act* is clear that employees cannot bear any of their employer’s business costs. However, determining if an employer has contravened this rule becomes harder when the employee is bearing costs that used to be purely personal, but are now partially employment-related. An example of this is the question of whether an employer must now reimburse an employee for part of the cost of their internet or rent, since an employee may now be using both to perform their work duties at home.

If a dispute regarding the costs of working from home is brought before Employment Standards, the following non-exhaustive list of factors may be considered:

- whether the employee is required to incur the expense,

or if it is voluntary;
- whether there are consequences to not incurring the expense (e.g. loss of employment);
- whether the arrangement is mutually beneficial;
- the reason(s) the work from home arrangement commenced;
- whether extra costs have been incurred by the employee in using their personal property;
- whether the payment obligation is independent of the employment relationship; and
- whether the cost claimed by the employee is notional or definitive.

None of these considerations are determinative. When issues such as bearing employers' business costs arise, Employment Standards considers the specific facts of the situation to determine whether an employee is, in fact, bearing the costs of the employer. In short, there is no decisive framework to follow at this time.

At this point, employers should be as clear as possible with employees, from the outset, as to what working from home will entail. Open communication about what will and will not be covered by the employer will help alleviate future misunderstandings. As it stands, employees may use their own tools and devices for their work, however, the employer will likely have to pay for the expense of operating such devices. Currently, that notion has not been extended to include an employee's rent obligations.

Instead of reimbursing employees for specific costs incurred, some employers may opt to pay all employees an allowance, which can be used at the employee's discretion. Note that an allowance received by an employee is a taxable benefit whereas reimbursements of employment-related expenses are generally non-taxable.

Tax

Because the law in B.C. has not yet decided several of these issues definitively, many employees may rely on the tax system to claim deductions for working from home expenses in 2020. An employee can deduct (i) the cost of supplies ("Home Office Expenses"); and (ii) a portion of the costs related to the use of a work space in a "self-contained domestic establishment" ("Office Space Expenses"). However, to claim these deductions, stringent requirements must be met.

For example, to deduct Home Office Expenses, the employee must have been "required by their contract of employment" to pay for Home Office Expenses. Under the current rules, an employee may deduct the cost of acquiring stationery items, toner, ink cartridges, and a portion of their basic cell phone service plan (provided certain conditions are met); however, an employee may *not* deduct monthly access fees for home internet service or the cost of office equipment (e.g. a home computer).

Further, to deduct Office Space Expenses, the employee must be able to establish that the work space must either be:

1. used principally for the performance of office or employment duties; or
2. used exclusively during the period to which the expenses relate, to earn employment income, and on a regular and continuous basis, used for meeting clients or other persons in the ordinary course of performing the employment duties.

The term "principally" has generally been interpreted by the CRA to mean more than 50% of the time; however, it remains unclear whether the test must be applied on an annual basis (i.e. must an employee work from home for at least 6 months in order to meet this requirement') or whether the test will be met if the employee worked from home more than 50% of the time

in which their employer required them to do so. “Used exclusively” has been interpreted to mean “used only to earn income”. As many employees do not have a segregated workspace (i.e. many employees are working from their kitchen table in the middle of their homes), it may be difficult to qualify under the second alternative.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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