

# CUPE THE FACTS

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## Bargaining Benefits – Cellular Phones/Pagers

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### Introduction

Many employers require CUPE members to have a cellular phone or pager in order to carry out their job related duties and responsibilities. When the employer requires members to have a cell phone or pager, the employer should pay all associated costs. The costs of having a cell phone/pager can be quite high, especially for CUPE members who use their cell phone/pager frequently or travel great distances on employer related business. However, depending on the specific language in your collective agreement, cell phone/pager reimbursements may be viewed as income by the Canada Revenue Agency (CRA) and therefore subject to income tax, which would mean fewer dollars in members' pockets.

The purpose of this fact sheet is to provide CUPE members, bargaining teams, and staff with information on bargaining language related to cellular phones/pagers. Recommended model language is provided that will put the onus on the employer for all cell phone/pager related costs and expenses.

### Employer should pay all costs

If having a cell phone or pager is a condition of employment, for example so that the employer can contact you, or is required in order for members to do their jobs then the employer should pay all cell phone/pager related costs and expenses, as the following recommended language stipulates:

*The employer agrees to provide a cellular phone and/or pager to each employee that is required to have a cellular phone and/or pager for the performance of her/his job related duties and responsibilities. The purchase, maintenance, loss and repair of phones/pagers, and payment of phone/pager bills, are the responsibility of the employer.*

Bargaining teams might also want to consider adding language that obligates the employer to fully reimburse members for cell phone/pager related costs and expenses.

*The employer agrees to reimburse eligible employees upon receiving proof of purchase of a cell phone/pager. The reimbursement will be equal to the full cost of the cell phone/pager purchase. Further, the employer agrees to pay 100% of all costs associated with the operation of the cellular phone/pager including but not limited to the following:*

- *All monthly fees including 911 and service access fees*
- *Ongoing activation fees*
- *Voice Mail and Call Display*
- *Long distance calls and associated roaming fees*
- *The extra per minute charge, should the number of total usage minutes be greater than the monthly allowance*
- *Hands-free cell phone equipment*
- *Text and data charges including all applicable taxes*

*The employer will pay the full costs associated with the replacement of cellular phones/pagers every three (3) years or sooner in the case of equipment failure, loss, or theft. The choice of cell phone/pager provider rests solely with the individual employee.*

Essentially, if members are required to have a cell phone/pager for work related activities then all associated costs should be paid by the employer.

### **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 cell phone/pager bills and reimbursements, for a period of 7 years in the event that you are audited.

### **Avoiding the pitfalls in negotiated language**

We don't want to be in position where 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. Here's what makes a cell phone/pager benefit taxable:

#### **1. Negotiating Caps**

Negotiating a cap on the amount reimbursed by the employer could be viewed as taxable income by the CRA. In fact, we know of at least one situation where this has occurred. The collective agreement contained a provision whereby the employer agreed to provide CUPE members with a cell phone reimbursement of \$30.00 per month. But, what if a worker's monthly cell phone/pager bill is less than \$30.00?

According to CRA rules, the difference could be considered as taxable income. So, for example, if a worker's monthly cell phone/pager bill is \$22.00, and the employer reimburses the worker at a rate of \$30.00 per month, the difference in the amount of \$8.00 could be considered as income and therefore a taxable benefit. However, there would be no issue if the worker's monthly cell phone/pager bill exceeded \$30.00.

To avoid a situation in which a portion of the worker's cell phone/pager reimbursement could be considered as taxable income by the CRA, the following language is recommended:

*The employer agrees to reimburse employees at a maximum of \$XX.XX per month upon proof of activation.*

The employer would be obligated to pay employees the exact amount of their monthly cell phone/pager bill – no more and no less. So, if your cell phone/pager bill for the month of June was \$28.17, then the employer would be required to reimburse you that amount – \$28.17. In the event your cell phone/pager bill exceeded \$30.00 in a given month, the employer would only be required to provide you with the maximum \$30.00 reimbursement.

#### **2. Use of Cell Phone/Pager When Not at Work**

If the employer needs to keep in contact with the worker during her/his absence from work the reimbursement could be considered a non-taxable benefit. However, the CRA could argue that during an absence from work the worker is not technically working and therefore does not require a "reimbursed cell phone/pager"; in this situation the CRA could rule that the reimbursement is indeed a taxable benefit.

Negotiated language should make clear that when employees are off shift and during leaves of absence from work, the employer requires contact with the employee so that the benefit remains non-taxable. Workers required to have a cell phone/pager for employer related business should not have to pay the costs of ongoing activation fees while on vacation or other leaves – the responsibility for such costs rightly rests with the employer.

### **Conclusion**

Many CUPE members are required to have a cellular phone/pager for work related purposes – in many workplaces it's a necessary tool that gives workers greater protections and safety, especially for those workers who work in the community or travel long distances by car. Some employers require that employees be reachable by some means other than their landline, by cellular phone or pager for example. However, workers should not be expected to be out-of-pocket for the purchase, maintenance and ongoing monthly expenses of a cellular phone/pager that the employer requires workers to have in order to do their jobs; that responsibility rightly resides with the employer.

### **Useful Tip:**

If the employer refuses to pay for costs associated with a cell phone/pager purchase and/or associated fees, 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 cell phone/pager expenses, from her/his income. But in order for you to deduct expenses your employer must first fill out the form.

Cell phones/pagers must be used for business purposes only in order for the reimbursement to be considered a non-taxable benefit. That means that workers are typically responsible for paying all charges related to personal use of their cell phones/pagers. If the employer is paying for workers' personal usage such reimbursement could be considered as taxable income by the CRA.

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