

DOL FAB on Apprenticeship and Training Plans

The DOL recently issued a Field Assistance Bulletin¹ on using apprenticeship and training plan assets to pay for skills competitions and related expenses. This 2014 Bulletin was a follow-on to their 2012 Bulletin² on using plan assets to pay for graduation ceremonies and advertising.

Required for all expenditures

Fiduciaries must ensure the reasonableness of plan expenses in light of the education objectives of the training program, be able to justify expenses as an appropriate and efficient means of carrying out the plan's mission, and reasonably determine the expenses are likely to promote legitimate plan objectives.

Expenses should be permitted under plan terms and approved by a responsible plan fiduciary in accordance with internal accounting, recordkeeping, and administrative controls designed to prevent inappropriate, excessive, or abusive expenditures of plan assets.

The DOL indicates in the 2012 Bulletin that written expense and internal control policies may be required in certain circumstances.

Specific to graduation ceremonies

Expenses must be for the costs of ceremony and modest in relationship to the plan's assets. For example, using plan assets to pay for a ceremony offering light refreshments with diplomas and token awards or gifts for instructors is permissible, but payment of a graduation dinner for all attendees, valet parking, or travel or accommodations would generally not be acceptable.

Specific to advertising and outreach

Expenses for marketing must be prudent and economical. For example, t-shirts provided to apprentices with the program logo may be an appropriate expense if the expense is modest; however, tickets to sporting events would generally be unreasonable plan expenses, as would donations to charities.

Specific to skills competitions

Travel expenses: The plan may pay or reimburse travel expenses for contestants, as well as judges and others who play a necessary role in the competition (e.g., trustees assessing the competition for possible training program improvements). Travel expenses include transportation, accommodations and meals. Alternatively, the plan may pay a per diem for travel.

Organizing expenses: The plan may pay for competition costs so long as they are reasonable both in light of the role played by the competition in supporting the training program and in proportion to the amount of funds otherwise expended on training and instruction. For example, modest gifts to those assisting with the competition (e.g., a \$25 gift card), communications to plan participants about the event, transportation of necessary equipment, and competition advertising to encourage participation and employer support may be acceptable expenses.

Prizes: The plan may pay for prizes consistent with the purpose of the plan (such as plan-related tuition credits or trade tools). Amounts spent on prizes to participants should be reasonable in light of the financial situation of the plan and other relevant circumstances, such as the size and level of the competition.

Lost wages: The plan may pay an apprentice's lost wages while participating in the contest. The plan may also reimburse an employer if it paid a contestant's wages. Reimbursement is permissible so long as it is made pursuant to a clear agreement arranged in advance, covers only the compensation the employer paid while the apprentice was absent from work to participate, the employer has no separate legal obligation to pay such compensation, and the amount reimbursed is reasonable. Note also that before reimbursing a contributing employer, plan fiduciaries should ensure compliance with ERISA 404 and not violate ERISA 406.³

Registration fees: The plan may pay or reimburse an apprentice's reasonable registration fee.

From all of us here at Song Mondress, your employee benefits law firm.

Not intended as legal advice.

¹ FAB 2014-02.

² FAB 2012-01.

³ For example, if the employer has an employee who serves as a trustee to the plan, the trustee should recuse him or herself from the decision to reimburse lost wages.