

CELL PHONE POLICY

I. BACKGROUND

The Erie County Board of Developmental Disabilities provides employees with certain electronic and telecommunication equipment for use outside of the employer's premises to aid in the performance of their duties. Those items are considered "listed property". Since the property lends itself to personal use, strict substantiation requirements are in place. The use of a cell phone by an employee is viewed as a fringe benefit, which must be taxed when it is used in any capacity for personal use. Employees are required to account for business and personal use. Per IRC §280F (d) (4), personal use of a cell phone is to be included in the wages of the employee. If documentation requirements are not met, all use is included in the wages of the employee.

II. PURPOSE

The purpose of this policy is to ensure that the ECBDD is not in violation of federal mandates for the use of public funds. This policy was created in response to common misinterpretations of the Internal Revenue Code by local governments. The IRS requires that documentation for business and personal calls be extremely detailed. Currently, no departments or staff are documenting and substantiating to the detail required by the IRS. The IRS can declare that all undocumented use is personal and should be taxed as wages, even if the calls were primarily for business use. Although, receiving a taxable allowance for any individually owned cell phone removes this detailed documentation requirement.

III. POLICY

A. The Board has two options to choose from in order to be IRS compliant. One option is to have each employee reimburse the County for personal calls made. The second option is for employees to own their own cell phones and receive a monthly taxable cell phone allowance. Cell phones should not be selected as an alternative to other means of communication, i.e. land lines, pagers, etc. when such alternatives would provide adequate but less costly service to the Board.

1. The Board may, upon approval of this policy, and determination of department heads, give employees a cell phone allowance, which will be included in their taxable income. Payment of the cell phone monthly bill will be the responsibility of the employee. If a cell phone reimbursement is preferred by the individual, the Board will no longer purchase any new cell phones for that individual, nor will any existing cell phone contracts be renewed or extended. In order to avoid cancellation fees, and to allow for an orderly transition, anyone currently using a Board owned cell phone, acquired prior to the establishment of this policy, has two years from the effective date of this revision of the policy to comply with this revised policy.

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2. For an employee to be reimbursed for the cost of the cell phone plan, the individual must demonstrate that a cell phone plan is an integral part of their job and they could not effectively carry out their job responsibilities without it. A cell phone reimbursement is justified for the following reasons:

- a. This employee is a key staff member needed in the event of an emergency.
- b. This employee is frequently away from access to traditional land-based phone services.
- c. This employee is involved in frequent off hours/on-call activity.
- d. The nature of this employee's work is critical to the operation of the Board and immediate response is required.
- e. This employee's assigned work required substantial travel.
- f. The anticipated level of business use is significant.
- g. The related cost is justified when compared with alternative communication choices.
- h. Other Reason approved by Superintendent.

If an employee's job duties do not include the frequent need for a cell phone, then the employee is not eligible for an allowance to cover cell phone expenses. Such employees may request reimbursement for the actual extra expenses of business calls made using their own cell phone. However, expenses made for minutes included in the plan will not be reimbursed. Allowances will cease at the end of a contract period. In order to keep an allowance in continuation, an Allowance Request Form must be filled out and submitted to your Supervisor at least one month before your allowance runs out. This allowance does not affect base pay for employees and is not included in the calculation of pay raises based on percentage increases. The reimbursement rate will be determined by the Superintendent. An employee may get a higher reimbursement rate at a later date if their current allowance does not cover their business use. The dollar amount of cell phone reimbursement should cover the employee's projected business-related expenses only. Cost of basic equipment, and the employee's cell phone use related to business, should be considered. The County will not cover cell phone insurance. This expense will be paid by the employee. Web access via cell phones and text messaging will not be paid by the County unless approved by the Superintendent. If a more expensive phone is requested, that is above the cost of a basic phone, but the employee's job doesn't require it, the employee will pay the difference in the allowance amount and the actual cost of the phone. If an employee's job requires that they have access to email, internet, GPS, calendaring or other PDA functions, the superintendent may approve the purchase of a specific phone, or other device that is required to perform the job. A copy of the Allowance Request Form and of the employee's

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related cell phone contract must be kept on file in the employee's file. The Supervisor is responsible for an annual evaluation of each employee's cell phone reimbursement to determine if it should be continued, terminated or modified.

3. If the Board chooses not to offer a cell phone allowance or employees choose not to accept a cell phone allowance, employees are required to adhere to the documentation requirements as described in IRC §274F(d). All employees who are issued a Board owned cell phone are required to review their monthly cell phone statement within 5 working days of Board receipt of the statement. The cell phone statement must be signed and dated by the user and noted whether all calls made and/or received were for business purposes. All personal calls made on a county owned cell phone should be noted on the monthly statement. The cost for personal minutes will be equal to the cost of the minutes in the Board plan. The cost of minutes in the Board plan is determined by dividing the monthly cost of the plan by the allowed minutes in the plan, or the actual minutes used, whichever is larger. The total that is to be reimbursed to the Board for personal calls shall be no more than the actual per minute cost incurred by the Board.

If an employee decides not to complete this documentation requirement each month, the IRS may view the entire statement as personal use, and the entire bill will be taxed at 28%, along with a 20% penalty.

The Business office is responsible for disbursing to each of their employees their personal telephone bill on a quarterly basis, unless the employee requests to be billed on a monthly basis in writing, ensuring all calls that were made are listed on the bill. The personal bills should be distributed as soon as the Business office receives a signed bill indicating personal use.

After each employee receives their personal bill, they have 3 working days to complete the Personal Use Reimbursement Form, and either reimburses the Board for personal calls billed or mark the appropriate space indicating that they want the bill total to be reported on their W-2 as a taxable benefit. Each employee's Supervisor must sign approval of the reimbursement form. Once the Personal Use Reimbursement Form is completed, it should be given to the Business office along with a personal check made payable to "Erie County Board of Developmental Disabilities" if the payment option is chosen, and a copy of the phone bill with personal calls highlighted. The Business office will promptly deliver to the Auditor's office the Personal Use Reimbursement Form, copy of employee's phone bill and the employee check, if using the payment option, reimbursing the County for personal calls made.