written agreement between the employer and employee setting out the conditions under which the bond is given. Cash bonds (plus any accrued interest) must be returned to the employee immediately upon the employee’s return of the property that was provided by the employer, or the employee’s fulfillment of the agreement, subject to any deduction necessary to settle the account between the employer and employee. Any amount that is retained by the employer cannot exceed the value of the unreturned property, which, due to normal wear and tear, may be less than the value of the property when it was first provided to the employee. (Labor Code sections 400–410.)

VI. REIMBURSEMENT OF EXPENSES

Employers must reimburse employees for losses and reasonable expenses incurred in the performance of the employee’s job duties. This law is intended to prevent employers from passing their operating expenses on to their employees (Labor Code section 2802). Also, the IWC wage orders contain provisions specifically directed at expenses for tools, equipment, and uniforms.

A. NECESSARY EXPENSES

Employers must “indemnify” (reimburse) employees for all necessary expenditures and losses incurred in the performance of their job duties. With respect to expenses, the key is whether the expenditure was reasonable under the circumstances. For example, an employee who is required to stay overnight on an out-of-town business trip will be entitled to reimbursement of reasonable costs for travel and lodging, rather than for actual expenses if those expenses were unreasonable (for instance, staying at a five-star hotel). An employer can set a limit on reimbursement amounts for various categories of expenses, provided this cap is reasonable and was made known to the employee before the expenses were incurred. (Labor Code sections 2802, 2804.)

B. VEHICLE EXPENSES

If an employer requires or allows an employee to use a personal vehicle for business travel, the employer must reimburse the employee fully for costs incurred. There is no mileage reimbursement rate set by law, though as a practical matter an employer can use the Internal Revenue Service (IRS) mileage rate, which is presumed to cover the costs of vehicle usage. The IRS mileage rate changes every year. The current rate can be found by doing an Internet search for “IRS mileage rate.” Alternatively, an employer can reimburse employees for mileage by paying a lump sum periodically, but this sum must be sufficient to fully reimburse the employee for vehicle use.

If the employer provides the employee with a company vehicle for business travel, the employer must reimburse the employee for actual expenses incurred in fueling, maintaining, servicing, and repairing the vehicle. (Labor Code sections 2802, 2804; Gattuso v. Harte-Hanks Shoppers, Inc. (2007) 42 Cal.4th 554.)

C. FORM OF REIMBURSEMENT

An employer can reimburse any employee for business expenses through either separate reimbursement payments that are clearly distinct from the employee’s paycheck, or through an increase in the employee’s base wages in the form of a higher salary or commission rate than would otherwise be paid to the employee if the employee were not incurring any business expenses. However, if the employer reimburses expenses through increased wage payments, the employer must make this known to the employees in advance, and must clearly identify the portion of the payment that is the expense reimbursement. Separate business expense reimbursement payments are not taxed. However, increased wages subject the employee to increased tax liability. For that reason, an employer that uses the increased wage method of reimbursing expenses must ensure that the amount paid for such reimbursements will be sufficient to also reimburse the employee for the increased tax liability. (Gattuso v. Harte-Hanks Shoppers, Inc. (2007) 42 Cal.4th 554.)

D. REIMBURSEMENT FOR LOSSES

Any losses incurred in the discharge of an employee’s duties must be reimbursed by the employer. For example, if the employee’s personal
work tools are stolen at the jobsite during non-work hours, where it is impractical for the employee to carry the tools back and forth from home to the jobsite, the employer is required to reimburse the employee for the cost of the tools. ([Machinists Automotive Trades Dist. Lodge v. Utility Trailers Sales Co.](https://www.cOURTslaw.net/CA/141/141.html) (1983) 141 Cal.App.3d 80.)

**E. REIMBURSEMENT FOR LEGAL EXPENSES**

If an employee is sued by a third party for conduct in the course and scope of employment, the employer must reimburse the employee for attorney’s fees and costs related to defending the lawsuit. If the employee loses the lawsuit, the employer must reimburse the employee for the amount of the judgment. Indemnification (the legal term for covering costs) is required as long as the employee was acting within the scope of her employment, regardless of whether the employee wins or loses the lawsuit, or whether the employee is found to have done nothing wrong or is found to have been negligent in some aspect of her job. Indemnification is not required if the employee was sued for, and was found to have engaged in, certain types of willful misconduct, such as serious sexual harassment, that fall outside the course and scope of employment, even if the conduct occurred during work hours on the employer’s premises. ([Farmers Insurance Group v. County of Santa Clara](https://www.courtlaw.net/CA/11/11.html) (1995) 11 Cal.4th 992; [Jacobus v. Krambo Corp.](https://www.courtlaw.net/CA/78/78.html) (2000) 78 Cal.App.4th 1096.) However, if the conduct falls short of extremely wrongful, the employer will generally be required to pay for the employee’s legal expenses.

Usually, when an employee is sued in connection with work-related conduct, the employer is also sued. The employer may provide the employee with representation by the same attorney who is representing the employer. Because the legal interests of the employee may differ from those of the employer, it is often advisable for the employee to consult and possibly hire an independent attorney to ensure there is no conflict of interest. In certain cases, where the legal interests of the employer and the employee are not the same, and the conduct on which the suit is based was within the scope of the job, the employer will be obligated to cover the cost of independent counsel. ([Grisson v. Vons Companies](https://www.courtlaw.net/CA/1/1.html) (1991) 1 Cal.App.4th 52.)

**F. COSTS OF TOOLS AND EQUIPMENT**

The IWC orders provide that when tools or equipment are required by the employer or are necessary to perform the job, they must be provided and maintained by the employer. There are two exceptions to this requirement, for all workers except construction workers:

- Employees whose wages are at least two times the minimum wage may be required to provide and maintain hand tools and equipment customarily required by their trade or craft. The IWC has explained that the term “hand tools and equipment” is limited to hand (as opposed to power) tools and personal equipment, such as tool belts or tool boxes, that are needed by employees to secure these hand tools.
- Employers do not have to provide tools to registered apprentices.

The employer must furnish tools and equipment that are necessary for safety under Cal-OSHA, the health and safety law. For example, if heavy-duty insulated gloves are required to safely perform a certain kind of electrical work, the employer must provide those gloves. ([Labor Code sections 6401, 6403; 8 California Code of Regulations sections 3380–3411, 3556; IWC Orders 1-2001–15-2001 section 9, IWC Order 16-2001 section 8; IWC Statement as to the Basis for 2001 Wage Orders.](https://www.courtlaw.net/CA/16/16.html))

**G. COSTS OF UNIFORMS AND PROTECTIVE APPAREL**

When an employer requires uniforms to be worn as a condition of employment, it must provide and maintain them. Uniforms are defined as “wearing apparel or accessories of distinctive design or color.” Clothing that is specific to an employer, such as a particular color combination, constitutes a uniform. An employee can recover the cost of a required uniform in a claim for unpaid wages. ([Dept. of Industrial Relations v. UI Video Stores, Inc.](https://www.courtlaw.net/CA/55/55.html) (1997) 55 Cal.App.4th 1084.)

Maintenance of the uniform includes dry cleaning, ironing, or separate laundering, where such special maintenance is necessary. If the uniform becomes worn or torn due to normal use and must be replaced or repaired, the employer must pay for the replacement or repair. ([IWC Orders 1-2001–15-2001 section 9, IWC Order 16-2001 section 8.](https://www.courtlaw.net/CA/16/16.html))