



AB 1234's Requirements vis-à-vis Expense Reimbursement: Frequently Asked Questions (FAQs)

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1. What, in a nutshell, does AB 1234¹ require in the area of expense reimbursement?

AB 1234 contains certain requirements and restrictions on local agency practices relating to reimbursing local elected and appointed officials' expenses. AB 1234 requires local agencies to:

- Adopt expense reimbursement policies that specify the *kinds of activities* that will be reimbursable;²
- Identify a “reasonable time” within which requests for reimbursement must be submitted in those policies;³
- Use expense report forms; and
- Require that all expenses must be documented with receipts⁴ (these documents are public records subject to disclosure⁵).

AB 1234 says that such a reimbursement policy may specify what constitutes reasonable *rates* for travel, meals, lodging and other expenses. If a local policy does not specify reimbursement rates, then the reimbursable rates default to those in the Internal Revenue Service guidelines.⁶

If a legislative body member wants to seek reimbursement for levels of expenses not otherwise authorized under the agency's reimbursement policy, then the official may seek *prior* approval for such reimbursement from the governing body (before incurring the expense).⁷

¹ Chapter 700, Statutes of 2005.

² Cal. Gov't Code § 53232.2(b).

³ Cal. Gov't Code § 53232.3(c).

⁴ Cal. Gov't Code § 53232.3.

⁵ Cal. Gov't Code § 53232.3(e).

⁶ Cal. Gov't Code § 53232.2(c).

⁷ Cal. Gov't Code § 53232.2(f).

Officials who spend more than allowed under their agencies' reimbursement policies have the option of simply paying the extra costs themselves.⁸

2. How broadly defined is the term "reimbursement"?

AB 1234 does not define "reimbursement." However, the usual rule of statutory construction is that, when a term is not defined, the ordinary dictionary definition applies.⁹ According to the *American Heritage Dictionary*, "reimburse" means to:

1. To repay (money spent); refund.
2. To pay back or compensate (another party) for money spent or losses incurred.

Thus, strictly speaking, AB 1234 only applies to those circumstances under which elected and appointed officials (for example, members of boards and commissions) seek payment from an agency for expenses incurred in the course of their service to the agency.

3. Does AB 1234's restrictions, or the policies adopted pursuant to AB 1234, apply to expenses which are not reimbursed but are incurred by local agencies in the first instance (for example, on the agency's credit card)?

No. The local agency has the option, of course, of adopting policies that apply to those kinds of expenses or drafting its AB 1234 policies broadly enough to cover expenses incurred as well as expenses for which reimbursement is sought. But AB 1234 does not require them to do so.

4. Which agencies must adopt reimbursement policies?

Any local agency that reimburses any of its elected and appointed officials on legislative bodies for expenses must adopt a policy.¹⁰ Local agency includes "a city, county, city and county, charter city, charter county, charter city and county, or special district."¹¹ The definition of "legislative body" is tied to the Brown Act definition of legislative body (see text in note below¹²).

⁸ Cal. Gov't Code § 53232.2(g).

⁹ See *People v. Siravo*, 17 Cal. App. 4th 555, 560, 21 Cal. Rptr. 2d 350, 352 (2d Dist. July 27, 1993), *rev. denied* (Oct. 21, 1993). See also *City of Berkeley v. Cukierman*, 14 Cal. App. 4th 1331, 1339, 1340, 18 Cal. Rptr. 2d 478, 481, 482 (1st Dist. 1993) (noting words of a statute must be given their ordinary meaning and looking initially to a dictionary for that meaning).

¹⁰ Cal. Gov't Code § 53232.2(b).

¹¹ Cal. Gov't Code § 53232(c).

¹² Government Code section 54952 provides in that regard:

As used in this chapter, "legislative body" means:

Again, the tie to “local agency” as defined in the bill, means that AB 1234’s requirements on reimbursement policies do not apply to some kinds of agencies on which local officials serve (for example, redevelopment agency governing boards or joint powers agencies), although of course voluntarily adopting expense reimbursement policies is a prudent course of action for non-covered entities. It also does not apply to school districts.

5. Is there a place where we can find sample reimbursement policies?

Yes, at www.ca-ilg.org/ab1234compliance. Keep in mind, however, that there is no one-size-fits-all approach to such policies and AB 1234 specifically allows local agencies to tailor their policies to their communities’ needs and standards.

(a) The governing body of a local agency or any other local body created by state or federal statute.

(b) A commission, committee, board, or other body of a local agency, whether permanent or temporary, decisionmaking or advisory, created by charter, ordinance, resolution, or formal action of a legislative body. However, advisory committees, composed solely of the members of the legislative body that are less than a quorum of the legislative body are not legislative bodies, except that standing committees of a legislative body, irrespective of their composition, which have a continuing subject matter jurisdiction, or a meeting schedule fixed by charter, ordinance, resolution, or formal action of a legislative body are legislative bodies for purposes of this chapter.

(c) (1) A board, commission, committee, or other multimember body that governs a private corporation, limited liability company, or other entity that either:

(A) Is created by the elected legislative body in order to exercise authority that may lawfully be delegated by the elected governing body to a private corporation, limited liability company, or other entity.

(B) Receives funds from a local agency and the membership of whose governing body includes a member of the legislative body of the local agency appointed to that governing body as a full voting member by the legislative body of the local agency.

(2) Notwithstanding subparagraph (B) of paragraph (1), no board, commission, committee, or other multimember body that governs a private corporation, limited liability company, or other entity that receives funds from a local agency and, as of February 9, 1996, has a member of the legislative body of the local agency as a full voting member of the governing body of that private corporation, limited liability company, or other entity shall be relieved from the public meeting requirements of this chapter by virtue of a change in status of the full voting member to a nonvoting member.

(d) The lessee of any hospital the whole or part of which is first leased pursuant to subdivision (p) of Section 32121 of the Health and Safety Code after January 1, 1994, where the lessee exercises any material authority of a legislative body of a local agency delegated to it by that legislative body whether the lessee is organized and operated by the local agency or by a delegated authority.

6. Does AB 1234's restrictions apply to expenses incurred by local agency staff?

No. AB 1234's requirements relating to expense reimbursement policies and restrictions on reimbursement rates only apply to "reimbursements of members of a legislative body."¹³ For consistency and ease of administration, some local agencies have elected to adopt policies that govern expense reimbursements for staff as well as elected and appointed officials, but AB 1234 does not require local agencies to do so.

7. What are the IRS rates for meal expenses?

The Internal Revenue Service establishes "per diem" thresholds for employees; any amounts in excess of the per diem for a given area is treated as additional wages for income tax purposes. For example, for 2006, the standard per diem rate for meals (breakfast, lunch and dinner) and incidental expenses in the continental United States is \$39. However the rate for Los Angeles, San Francisco, and San Diego areas (as defined) is \$64.¹⁴

AB 1234 gives local agencies latitude to adopt whatever standards for meal reimbursements that meet community standards.

Local officials sometimes want to know what the state's practices are in terms of reimbursements. Senators and Senate employees, for example, are reimbursed according to the federal government's General Services Administration's rates by geographic area; the web address for these rates is:
http://www.gsa.gov/Portal/gsa/ep/contentView.do?queryYear=2006&contentType=GSA_BASIC&contentId=17943&queryState=California&noc=T.

Note that, under AB 1234, officials must still present receipts documenting expenses incurred, even if they are within the guidelines adopted by the IRS or the local agency.

8. If there are no mandatory reimbursement rates, is there no limit on what local officials may be reimbursed for?

The law specifies certain thresholds for what constitutes reasonable levels of expenses. For example, for lodging in connection with conferences, the rate may not exceed the maximum group rates published for the conference.¹⁵ If those rates are not available at the time the lodging is booked, the lodging rates must be comparable to those allowed by the Internal Revenue Service or government rates.¹⁶ Local agency officials must use group or government rates for non-conference-related

¹³ Cal. Gov't Code § 53232.2(b).

¹⁴ See Publication 1542 at www.irs.gov or www.policyworks.gov/perdiem.

¹⁵ Cal. Gov't Code § 53232.2(d).

¹⁶ *Id.*

lodging and transportation services.¹⁷

But otherwise, AB 1234 retains agencies' discretion, subject to community standards relating to the judicious use of scarce taxpayer dollars.

9. When must these reimbursement policies be adopted? What do we do about reimbursing expenses before we adopt the policies contemplated by AB 1234?

These reimbursement policies should be adopted as soon as possible. AB 1234 took effect January 1, 2006.

Agencies should not reimburse expenses until they have a policy in place. An option is to ask their officials to retain any receipts for reimbursable expenses until the policy can be adopted and then submit their reimbursement requests consistent with those policies and AB 1234's requirements.

10. May local agencies grant car allowances or other expense allowances under AB 1234?

This is a very good question on which agency attorneys disagree. Some agency attorneys believe that AB 1234's requirement that expenses be reimbursed after the fact based on receipts means that vehicle and other expense allowances are not permitted.¹⁸ Some local agencies had previously reimbursed auto expenses through an allowance, based on statute and case law¹⁹ that seemed to permit allowances when based on empirically demonstrable information that the allowance matched actual and necessary expenses incurred.²⁰

A factor to keep in mind with expense allowances is that they may be taxable (and subject to withholding) if the official cannot document that his or her actual expenses met or exceeded the allowance.²¹ This, and the requirement that any expense allowance be based on empirical information about actual expenses incurred, predate AB 1234's requirements. Request for an Attorney General's Opinion is pending on this issue. (<http://ag.ca.gov/opinions/searchOpinions.php>)

¹⁷ Cal. Gov't Code § 53232.2(e).

¹⁸ Cal. Gov't Code § 53232.3.

¹⁹ See Cal. Gov't Code § 1223 (authorizing local officials to "contract" for an allowance or mileage rate for automobile owned, rented or used in performance of duties); *Citizen Advocates, Inc. v. Board of Supervisors*, 146 Cal. App. 3d 171, 194 Cal. Rptr. 61 (1983).

²⁰ See *Albright v. City of South San Francisco*, 44 Cal. App. 3d 866, 118 Cal. Rptr. 901 (1975).

²¹ Treas. Regs. § 1.62-2T(e), § 1.3401(a)-1T.

11. If an agency has a current reimbursement policy, does AB 1234 require that it develop another policy if the current policy omits one of the identified items, like travel, meals, or lodging?

Agencies should consult with agency counsel to make sure that any existing policies comply with AB 1234's specific requirements.

12. What about expenses related to cell phone and Internet use for local agency business?

These also can be reimbursed according to local agency policy with documentation.²² In terms of kinds of documentation, one agency requires that telephone bills be submitted and that the official identify which calls were made on agency business. For cellular calls when the official has a particular number of minutes included in the official's plan, then the agency asks the official to identify the percentage of calls made on public business. For Internet access, if the officials submit an estimate of the percentage of agency-related usage for the period in question and proof of the amount of bill for such access.

Officials should keep in mind that all expense reimbursement requests and supporting documentation are public records.²³

13. How should local agencies interpret the requirement that members of a legislative body provide brief reports on meetings they attend at the expense of the local agency at the next regular meeting of the legislative body?

AB 1234 requires members of a legislative body to report on "meetings" attended at public expense at the next meeting of the legislative body.²⁴ "Meetings" for purposes of this section are tied to the Brown Act meaning of the term:²⁵ any congregation of a majority of the members of a legislative body at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the legislative body or the local agency to which it pertains.²⁶ Qualifying expenses include reimbursement to the member for meals, lodging, and travel.²⁷

An example of when a brief report is required is when a city council member or supervisor represents his or her agency on a joint powers agency board and the city pays for the official's expenses in serving in that representative capacity.

²² Cal. Gov't Code § 53232.3(c).

²³ Cal. Gov't Code § 53232.3(e).

²⁴ Cal. Gov't Code § 53232.3(d).

²⁵ Cal. Gov't Code § 53232.3(d).

²⁶ See Cal. Gov't Code § 54952.2.

²⁷ See Cal. Gov't Code § 53232.3.

Presumably the report can be either written or oral. The report must be made at the next meeting of the legislative body that paid for its member to attend the meeting.²⁸

14. Must a member of a legislative body who is reimbursed for his or her attendance at a conference, report on the conference at the legislative body's next regular meeting?

Technically, no. AB 1234 requires members of a legislative body who attend a meeting at the expense of the local agency to provide a brief report on the meeting at the next regular meeting of the legislative body.²⁹ AB 1234 defines "meeting" by reference to the Brown Act.³⁰ Because the Brown Act excludes from the definition of meeting "the attendance of a majority of the members of a legislative body at a conference," members technically need not report on the conference.³¹

It may, however, be useful for agencies to adopt local policies encouraging officials to report briefly on conferences attended. This debunks any notion that conference attendance is somehow a junket and also encourages officials to attend the conference sessions. For more on this topic, see "Attending Conferences" at http://www.cacities.org/resource_files/25263.conferences.pdf.

15. Can AB 1234's requirements for expense reimbursement be constitutionally applied to charter cities?

A number of charter city attorneys argue that expense reimbursement falls under the category of "compensation" over which charter cities have plenary authority to the exclusion of state regulation.³² Indeed, the portion of AB 1234 relating to expense reimbursement is located in an article in the Government Code entitled "Compensation."³³

Of course individual charter requirements and good fiscal management practices may make voluntary adoption of the kind of expense reimbursement policy contemplated by AB 1234 advisable. The Institute's sample reimbursement policy includes a suggested finding for charter cities stating that the reimbursement policy would satisfy AB 1234's requirements in the event such requirements could be constitutionally applied to charter cities.

²⁸ Cal. Gov't Code § 53232.3(d).

²⁹ Cal. Gov't Code 53232.3(d).

³⁰ Cal. Gov't Code § 53232(d).

³¹ Cal. Gov't Code §§ 54952.2(c)(2), 54954.

³² Cal. Const. art. XI, § 5. *County of Sonoma v. Commission on State Mandates*, 84 Cal. App. 4th 1264 (2000).

³³ Article 2.3 of chapter 2 of Part 1 of division 2 of title 5 of the Government Code.

16. What are the penalties for misuse of public resources or falsifying expense reports?

Penalties for misuse of public resources or falsifying expense reports in violation of expense reporting policies include:³⁴

- Loss of reimbursement privileges
- Restitution to the local agency
- Civil penalties of up to \$1,000 per day and three times the value of the resource used³⁵
- Criminal prosecution and a lifetime bar from public office³⁶

Note that these potential penalties existed under the law prior to AB 1234.

³⁴ See Cal. Gov't Code § 53232.4.

³⁵ See Cal. Gov't Code § 8314.

³⁶ See Cal. Penal Code § 424.