

IRS Regulations Governing Cell Phones

The IRS Regulations governing an employer payment of employee cellular telephone expenses require that certain conditions be met in order for the payment to be excluded from the employee's gross income as a working condition fringe benefit. If an employer provides a cell phone to an employee for business use, the *special substantiation rules* applicable to so-called "listed property" will apply. Listed property includes employer-provided automobiles, cell phones, personal digital assistants (PDAs), and other portable equipment that lend themselves to personal use since such equipment may be used by an employee when he or she is away from the employer's business premises.

Under the *special substantiation rules*, a taxpayer must document by adequate records or other evidence the following elements related to the use of the property: (1) the amount of such expense or other item, (2) the time and place of the use of the property, (3) the business purpose of the expense, and (4) the business relationship to the taxpayer of the persons using the property. An employer may not exclude from an employee's gross income *any* amount of the value of the listed property provided by the employer to the employee unless the employee adequately substantiates the amount of the business usage (Reg. Sec. 1.274-5T(e)(1)).

According to the IRS, it is not sufficient for an employee to simply highlight personal calls on the monthly cell phone bill and indicate that all the remaining calls are business related. The **business usage** of the phone must be adequately documented. The IRS website states that at a **minimum**, the employee must keep a record of each call and its business purpose. If the calls are itemized on a monthly statement, they should be identified as personal or business and the employee should retain any supporting evidence of the business call. This information should be submitted to the employer, who **must** maintain these records in order to exclude the value of the phone use from the employee's income.

(See IRS website: <http://www.irs.gov/govt/fslg/article/0,,id=167154,00.html>)

In order to comply with IRS regulations concerning cellular telephone usage, Methodist University has adopted the following cell phone policy:

The University will not own cell phones for the use of individual employees, nor will the University pay invoices for services provided by vendors classified as cell phone providers. Payment to cell phone providers via a University corporate or procurement card is prohibited.

If a supervisor determines that a university employee's job duties include the frequent need for a cell phone, then the employee is eligible for an allowance to cover cell phone expenses, which may be requested using the *Allowance Request Form*. The request may be made any time during the year, but must be reviewed and renewed at the beginning of each fiscal year (July 1). The allowance will be paid monthly via payroll from the employee's departmental budget. The monthly stipend is taxable income reported on the employee's Form W2, and is therefore, subject to taxation in accordance with IRS code.

This allowance does not constitute an increase to base pay, and will not be included in the calculation of percentage increases to base pay due to annual raises, job upgrades, bonuses, or benefits based on a percentage of salary, etc.

Although the allowance is taxable, it is believed that the benefits to the employee outweigh the costs. The benefits include: 1) a log is not required; 2) no monthly reporting is required; 3) phones may be used for personal calls and can be combined or enhanced with other personal plans.

Supervisors and appropriate senior staff members must approve the cell phone allowance. **In all cases for approval, the employee is required to be on-call (24/7).** The following guidelines should also be considered when identifying the need for a cell phone allowance:

- Safety requirements indicate having cellular phone is an integral part of performing duties of job description.
- More than 50% of work is conducted in the field.
- Required to be contacted on a regular basis.
- Critical decision maker

The amount of the allowance will depend upon the cost of the plan *approved* by the employee's department, taking into account the number of minutes needed for business calls and monthly service fees. The service plan selected should be the least expensive plan that provides adequate business-related services. Upgrades to basic equipment (special cosmetic or technical features, etc.) or expected cell phone use that is not business-related is at the employee's expense. Determination of the dollar amount of the allowance is made at the department level by the supervisor, but must be within the guidelines and dollar limits established under this policy.

Plan	Monthly Stipend
450 Minutes	\$45
900 Minutes	\$65
450/Blackberry/PDA	\$85

The University will pay only the agreed upon cell phone allowance even if monthly costs exceed the allowance. If the amount of the allowance subsidy needs to be changed because of documented business purposes, supervisors will need to adjust the allowance and approve and submit a new *Allowance Request Form*.

The cell phone contract will be in the name of the Faculty or Staff member and said employee will be solely responsible for all payments to the service provider. Only one cell phone allowance will be provided per employee. The University does not accept any liability for claims, charges or disputes between the service provider and the employee. Recipients of a cell phone allowance must notify the University of the cell phone number and must continue to maintain the cell phone while receiving an allowance. The University reserves the right to remove a participant from this plan if there are insufficient funds in the designated departmental budget to meet the cost of the monthly allowances.

If, prior to the end of the cell phone contract, a personal decision by the employee, or employee misconduct, or misuse of the phone, results in the need to end or change the cell phone contract,

the cost of any fees associated with that change or cancellation will be the responsibility of the employee.

If, prior to end of the cell phone contract period, a departmental decision (unrelated to employee misconduct) results in the need to end or change the cell phone contract, the department will be responsible for the cost of any fees associated with that change or cancellation. For example, the employee's supervisor has changed the employee's duties such that a cell phone is no longer needed for business purposes. If the employee does not want to retain the current contract, any fees associated with the change or cancellation will be reimbursed by the department.