

## Risk of Expense Reimbursement Liability During California Stay Home Order

Many employers have closed their office doors and asked employees to work from home under the various Safer-At-Home orders. But is this creating new liability exposure? Under California Labor Code Section 2802, an employer must reimburse an employee for all necessary business expenses incurred by the employee. This provision creates new risks of exposure if employers mandate their employees work from home instead of the office.

California's courts are shut down, so there are no cases addressing the specific circumstances of reimbursements during a pandemic. However, in a somewhat similar set of circumstances, the California Court of Appeal held that an employer should pay some portion of the expenses of employees who are mandated to work from home – even if the employee does not incur any additional costs. In *Cochran v. Schwan's Home Service, Inc.*, (2014) 228 Cal.App.4th 1137, the court asked:

Does an employer always have to reimburse an employee for the reasonable expense of the mandatory use of a personal cell phone, or is the reimbursement obligation limited to the situation in which the employee incurred an extra expense that he or she would not have otherwise incurred absent the job? The answer is that reimbursement is always required. Otherwise, the employer would receive a windfall because it would be passing its operating expenses on to the employee.

Of note, this fact that the employer mandated the use of a cell phone was a significant issue for the court. The court in *Cochran* also noted:

To show liability under section 2802, an employee need only show that he or she was required to use a personal cell phone to make work-related calls, and he or she was not reimbursed. Damages, of course, raise issues that are more complicated.

Thus, to be in compliance with section 2802, the employer must pay some reasonable percentage of the employee's cell phone bill or of other “required” expenses. Because of the differences in cell phone plans and work-related scenarios, the court did not attempt to create any sort of formula to determine an appropriate share of reimbursement. Employers should instead try to reach a reasonable agreement with employees on reimbursement of “required” home business expenses (such as internet connections). One reasonable option employers should consider is to offer some proportionate share of reimbursement for all employees required to work from home, with each individual employee able to appeal the allocation if they feel some other arrangement is more equitable.

In accordance with California Labor Code 2802 and Cochran, only “required” expenses that employees incur must be reimbursed. Employers do not need to reimburse expenses that employees voluntarily incur. If an employer requires an employee to work from home, the employer may be obligated to provide equipment or provide reimbursement for the required equipment and for related required expenses. However, if the employee wants to upgrade equipment solely for their convenience, such as additional monitors or an ergonomic chair, the employer would likely not be required to reimburse for the upgrades because they are not “necessary” or “required” for the employee to perform his or her work (as an aside, this does not include employees asking for accommodations based on a disability, which creates an entirely separate set of concerns that must be addressed through the interactive process). As such, if an employer is working in an essential business sector and the workplace remains open, and the employee has the option to work from home instead of the workplace during the crisis, there is likely no obligation to reimburse the employee for a share of their normal home expenses, as the employee has chosen to work from home for their safety and convenience.



One note of caution – the case law on this topic all deal with situations where an employee working from home does so strictly for their convenience. How the courts will react to expenses incurred during a pandemic where there are concerns of convenience, safety, and the compliance with state and local pandemic orders that encourage employees to work from home remains unknown. Employers should proceed cautiously in the face of this uncertainty and should not dismiss unusual reimbursement requests from employees without adequate consideration.

As always, the law is often very fact specific, so employers should discuss the facts of any reimbursement questions with the appropriate legal counsel.

Please contact Collins Collins Muir + Stewart LLP at any of our California offices to discuss further.

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