

## LEGAL UPDATES

# California Employers: Make Sure You Are Reimbursing Your Employees For The Necessary Usage of Their Personal Cell Phone and Internet Plans

In California, even when employees do not incur additional expenses associated with working remotely, employers still must reimburse their employees for a reasonable percentage of the employee's cell phone and/or internet plan(s).

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As most employers in California know, employees must be reimbursed for any necessary expenses they incur in carrying out their job duties. More specifically, Labor Code section 2802 states:

*An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.*

The COVID pandemic forced many organizations to allow their employees to work remotely, and many companies continue to allow portions of their workforce to work remotely on a part-time or full-time basis. Employees who work remotely often use personal cell phones and home Internet connections in the course of performing their work. So, do employers have to pay for some or all of an employee's cell phone and/or internet plan(s)?

In California, even when employees do not incur *additional* expenses associated with working remotely (i.e., when the employee pays a flat rate for internet and/or cell phone usage and business use does not increase the employee's costs), employers still must reimburse their employees for a reasonable percentage of the employee's cell phone and/or internet plan(s). The duty to reimburse employees for a portion of their personal cell phone and Internet charges exists when the employees have no practical alternative to using their personal resources for business purposes, even if the employer does not maintain a policy specifically mandating the use of the personal resources or devices.

Although California Courts have not defined "reasonable percentage," employers must reimburse employees for all expenses actually incurred for business purposes. Where the employee is paying a fixed amount for their cell phone and/or internet use, the employer must reimburse its employees for the percentage of the cell phone and/or internet expense(s) that can be attributed to the employee's mandatory use of the internet and/or their cell phone for work-related purposes. Alternatively, employers may elect to provide their employees with a company cell phone, and/or a device that also has unlimited internet access.

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In order to fulfill their duty to reimburse employees for cell phone and/or Internet expenses they incur in the course of performing their duties, employers can either pay the employee's actual costs as reflected on an invoice, or pay a flat amount that is sufficient to cover the portion of the employee's costs that is attributable to business use. If employers elect to pay a flat reimbursement amount, they should confirm in writing that employees who believe that their business use exceeds the default reimbursement amount may contact Human Resources and request payment in a higher amount to correspond to their actual business use.

If an employer fails to reimburse its employees for the necessary business expenses that employees incur in connection with the discharge of their job duties, the employer can face a wage and hour lawsuit, and, if successful, the plaintiff can recover all reasonable costs, including attorney's fees, incurred by the employee enforcing their rights, which can be significant. Additionally, if a company fails to pay its employees for necessary business expenses on a company-wide basis, the company may face a class action, or a claim pursuant to the Private Attorneys General Act, or both.

What Should Employers Do Now?

- **Review your expense reimbursement practices and update as necessary.** In light of the reality that many employees must use their personal cell phones and/or home Internet connections to perform their jobs, employers in California should review their expense reimbursement practices to ensure they are reimbursing employees for all expenses that employees incur in connection with the discharge of their duties, including personal cell phone charges and home Internet charges.
- **Review the job functions of remote employees.** In addition to cell phone and internet usage, employers should review the job duties of all remote employees to ensure that there are not any additional necessary business expenses that are being incurred which are not being reimbursement. These expenses may include, an at-home printer and printer paper and ink, computers, computer monitors, and ergonomic chairs.

If you have questions regarding expense reimbursements or any other issue related to employment law, please contact one of our attorneys: