

Employers - How Much is That Call Costing You?



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With California's ever expansive reimbursement obligations, employers must now be prepared to reimburse employees for the reasonable expenses stemming from employer mandated work-related calls on an employee's personal mobile devices.

In *Cochran v. Schwan's Home Service*, an employee brought a class action on behalf of 1,500 customer service managers at Schwan's Home Service, Inc. ("Home Service") claiming the employees were entitled to reimbursement under Labor Code section 2802 for expenses stemming from work-related calls on their personal cell phones. On August 12, 2014, a California appellate court in Los Angeles held that when an employee must use his or her personal cell phone for work-related calls, he or she is entitled to reimbursement under Labor Code section 2802. Moreover, the fact that the employee is already on an unlimited data plan or a group plan unaffected by the work-related calls is irrelevant. The court reasoned that any other interpretation would allow the employer to receive a windfall by passing on its operating expenses to the employee.

In order to comply with Labor Code section 2802, the court held the employer "must **pay some reasonable percentage** of the employee's cell phone bill" when the employer requires the employee to take and make work-related calls on the employee's personal cell phone. Unfortunately, the court failed to provide any guidance regarding what constitutes a reasonable percentage of the employee's cell phone bill and under what circumstance an employer requires its employees to use his or her personal cell phone for work.

While the decision is the first on this particular issue, employers should review their employee cell phone use practices in conjunction with their reimbursement policies to determine whether they are in compliance with California law, including Labor Code section 2802. Accordingly, employers should evaluate whether they have created scenarios where employees are **required** to use their personal cell phones to conduct their job duties, and if so, whether the employer has implemented policies that provide for reimbursement of a reasonable percentage of the employee's cell phone bill.

Employers may consider different policies to address the issues presented by Cochran, including:

- Revising written policies to prohibit use of personal cell phones for work-related purposes and providing training to supervisors to enforce such policies;
- Establishing a monthly reimbursement policy for employee cell phone calling and/or data plans, as applicable, or consider issuing company-owned cell phones to employees;
- Creating a method to track work-related use of personal cell phones for calls, email, etc.;

Employers may also want to consider whether they have policies that impact the use of other personal devices such as land-line phones, tablets, laptops, etc., as Cochran could have ramifications beyond cell phone usage. In addition, the reasoning of Cochran likely extends to data plans related to email usage and text messaging services on an employee's personal devices. As such, if employers require employees to read or respond to emails or text messages on their cell phones, the employer should reimburse the employees for a reasonable percentage of the data plans related to email usage and text messaging services.

Employers should contact their labor and employment law counsel with questions related to their compliance with and obligations under Labor Code section 2802.

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