

Professional Perspective

Challenges of Reimbursing Employees for Remote Work in California

Mark S. Spring, CDF Labor Law LLP

**Bloomberg
Law**

[Read Professional Perspectives](#) | [Become a Contributor](#)

Reproduced with permission. Published November 2020. Copyright © 2020 The Bureau of National Affairs, Inc. 800.372.1033. For further use, please visit: bna.com/copyright-permission-request

Challenges of Reimbursing Employees for Remote Work in California

Contributed by [Mark S. Spring](#), CDF Labor Law LLP

As the pandemic persists, employees all over California are performing their job duties remotely from home. These employees often incur additional hard and soft costs as a result of having to work remotely. Hard costs may include the purchase of items such as extra electronics and office equipment. Soft costs may include such things as increased heating and air-conditioning costs and the costs of upgraded internet/cell phone plans.

California has some very unique laws related to the reimbursement of work-related expenses for remote work. Employers need to know how to properly reimburse remote workers in the Golden State for their remote work expenses, or else they could face class action lawsuits and Private Attorney General Act (PAGA) actions.

Reimbursement of Employee Expenses

California's law on expense reimbursement is contained in Section 2802 of the California Labor Code. Cal. Labor Code § 2802. This statute requires employers to reimburse employees for all expenditures necessarily incurred by the employee in direct discharge of duties for the employer, or in obedience to directions of the employer. Section 2802 of the California Labor Code provides, in pertinent part:

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.

This is not a complicated statute to interpret when it comes to hard costs. If the employee purchases or is forced to incur expenses for a monitor, a desk, or other hard costs when required to work from home, the employer must reimburse the reasonable costs incurred in these purchases. Most employers already have set policies and procedures to deal with such expenses.

Case Law on Reimbursement of Recurring Soft Costs

Unfortunately, Section 2802 is not as easy to apply as it may seem when it comes to remote work and soft costs. In August 2014, a California appellate court issued a published decision in a case called *Cochran v. Schwan's Home Service, Inc.*, [228 Cal.App.4th 1137](#) (2014). This case muddied up the standard even more. In the *Cochran* case, the court of appeal analyzed expense reimbursement requirements under Section 2802 in circumstances where employees are required to use their personal cell phones for work purposes. The court held that if an employee is required to use a personal cell phone for business purposes, the employer is required to reimburse the employee. The court of appeal stated that reimbursement is required, even if the business use of the personal phone does not cause the employee to incur expense in excess of their usual, flat monthly rate.

The court did not specify how much an employer is required to pay in expense reimbursement. Instead, the court just indicated that it should be a reasonable percentage of the employee's total monthly bill. The *Cochran* court concluded: "We hold that when employees must use their personal cell phones for work-related calls, Labor Code section 2802 requires the employer to reimburse them. Whether the employees have cell phone plans with unlimited minutes or limited minutes, the reimbursement owed is a reasonable percentage of their cell phone bills."

The holding in *Cochran* is likely to apply to all similar soft costs. For example, if a California remote employee can prove that usage of home internet, home electricity/gas, home water, etc. is at an increased level because the employee is working remotely, it is likely that a trial court will apply the *Cochran* holding to those expenses as well.

Neither the wage orders, the California Labor Commissioner's office, nor the California courts have provided further clarification on the scope and amount of expense reimbursement that is required under California law when it comes to soft costs such as cell phone bills and utility costs. Although the California Labor Commissioner's office often offers guidance or opinion letters that help provide some basis for interpreting California's key wage and hour status, so far that

agency has failed to issue any specific expense reimbursement guidance for employers with remote workforces since *Cochran*.

This leaves great uncertainty about the extent of employers' expense reimbursement obligations related to California employees who are required to work from home. With exponentially more employees working remotely in California since March 2020, this issue has risen to the forefront. Employers are concerned about how to properly manage the expense reimbursement obligations of their remote workers and attorneys representing employees are looking at how they can maximize recovery against employers who violate the law through class action and California Private Attorney General Act lawsuits.

Solving the Problem of Recurring Soft Costs Reimbursement

Employers who require California-based employees to work remotely should first think creatively. Employers should identify the types of recurring soft expenses their remote employees incur and issue them a reasonable amount of expense reimbursement to cover those expenses. These expenses may include use of personal phones and other devices, use of home internet/WiFi, use of office supplies, such as printer ink and paper, increased electricity, and other utility costs.

For many of these items, it is impossible to determine the precise portion of an employee's expense that is work-related. As a result, the most popular practice is for employers to pay their California remote workers a reasonable fixed monthly amount to cover a reasonable portion of the monthly soft expenses that could be allocated to work use. In conjunction with these monthly stipends, employers are often encouraged to inform their California employees what the expense stipend is intended to cover (all home-related work expenses), and include a provision informing employees that if, in any month, they believe that the expense stipend is not sufficient to cover their specific remote work expenses, the employee should notify the employer, so that the employee's expenses can be reviewed and a determination made as to whether additional reimbursement is owed.

Although there is no specific case or administrative guidance authorizing this practice, this is considered the best practice in order to try to ensure compliance with Section 2802 and *Cochran*, when it comes to recurring soft expenses. In the alternative, some employers attempt to limit their exposure by providing employer-owned equipment—e.g. cell phones, laptops, printers, internet hotspots—for California remote employees to use at home. However, this does not resolve the issues related to increased utility costs such as HVAC.

Employees Who Work Remotely Voluntarily

It is important to remember that California's expense reimbursement law only applies to expenses that are “necessarily” incurred in direct consequence of the job duties or in complying with an employer's directions. This means that if an employee is incurring expenses that are wholly unnecessary or unreasonably exorbitant, they need not be reimbursed. Therefore, in cases where the employer is encouraging employees to work in the office, but the employee chooses voluntarily to work remotely, a strong argument can be made that expense reimbursement obligations of Section 2802 are not triggered because employees are free to report to work and not incur any such additional expenses. This is particularly true if the employer has notified employees that home office expenses will not be reimbursed in this situation.

Conclusion

Unlike many states, California has very strict and unclear requirements about reimbursing expenses for employees working remotely. Due to the unique enforcement mechanisms available in California, including the right of individual employees and their attorneys to bring enforcement actions under California's Private Attorney General Act, employers not in compliance with applicable laws are vulnerable to lawsuits for significant damages and penalties.

Those lawsuits are often not brought by current employees, so we have not seen many of them yet. However, if the recession persists and there are more remote workers laid off, it is likely that there will be many class actions and PAGA lawsuits brought based upon the failure to comply with California expense reimbursement law, particularly related to soft expenses.