
California Court Ruling Requires Reimbursement for Mandatory Employee Cell Phone Use

By Jennifer Woods, L. Steven Platt, John L. Hines, Jr. / Sep 04, 2014

On August 12, 2014, a California Court of Appeals ruled in *Cochran v. Schwan's Home Service, Inc.*, Case No. B247160, that employers are required to reimburse employees for a reasonable percentage of employees' personal cell phone bills where the employer requires the employee to make work-related calls.

Section 2802 of the California Labor Code requires that an employer "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." According to the court, Section 2802 was intended to prevent employers from passing their operating expenses on to employees.

The court found that, in the context of employee cell phone use, Section 2802 requires employers to reimburse employees for required, work-related personal cell phone usage, because a failure to provide such reimbursements would effectively pass the employer's operating expenses to the employees. Consequently, the court held, an employer is in violation of Section 2802 where an employee is required to use a personal cell phone to make work-related calls, and the employee is not reasonably reimbursed. While the court's opinion is limited to phone calls, and does not address the issue of reimbursement for texting and data usage on an employee's personal device, the court's reasoning and interpretation of Section 2802 appears to be equally applicable to those uses as well.

Significantly, the court did not discuss or define the parameters of a "reasonable reimbursement," and instead concluded that the calculation of a reimbursement will vary based on the particular cell phone plans and work-related scenarios of each case. However, the court noted that Section 2802 allows employers to consider several factors when calculating a reimbursement: (1) the actual expense incurred by the employee; (2) whether the expense was necessary; and (3) the employee's reasonableness in incurring the expense.

While the holding of this case is limited to California, the issue of employee reimbursements has arisen in lawsuits in other states, and is likely to continue to develop over time. Employers are advised to keep track of such developments, and adjust company policies as needed to ensure compliance with applicable law.

Moreover, companies may wish to review their "Bring Your Own Device" or "BYOD" policies to ensure compliance with the California ruling, where applicable, but also in light of evolving best practices in other areas, including information security, data retention, and e-discovery. Employers may also want to consider limiting or at least clearly defining the scope of company use and investigating technologies that enable splitting personal and company use so as to facilitate accounting and auditing for compliance with the reimbursement requirement.

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