

Must Employers Reimburse Employees for work Calls on Private Cell Phones?

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In *Cochran v. Schwan's Home Service, Inc.*, the California Court of Appeal for the Second Appellate District dealt with the question of whether employers are required to reimburse employees for work-related calls made on their personal cell phones.

Cochran involved a putative class action against Home Service on behalf of customer service managers who were not reimbursed for expenses pertaining to the work-related use of their personal cell phones. They claimed that they were entitled to such reimbursement under Labor Code 2802(a), which provides:

“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 trial court denied class certification, basing its ruling on the assumption that an employee does not suffer an expenditure loss if his or her cell phone chargers were paid for by a third person, or if the employee did not purchase a different cell phone plan because of cell phone usage at work. In addition, the trial court assumed that liability could not be determined without an inquiry into the specifics of each class members' cell phone plan.

The Court of Appeal ruled that this reasoning was erroneous:

“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 onto the employee. Thus, to be in compliance with [\[Labor Code\] section 2802](#), the employer must pay some reasonable percentage of the employee's cell phone bill. Because of the differences in cell phone plans and worked-related scenarios, the calculation of reimbursement must be left to the trial court and parties in each particular case.

As the Court reasoned, if an employee is required to make work-related calls on a personal cell phone, then he or she is incurring an expense that must be reimbursed by an employer under section 2802. It does not matter whether the phone bill is paid by a third person, or at all:

“In other words, it is no concern to the employer that the employee may pass on the expense to a family member or friend, or to a carrier that has to then write off a loss. It is irrelevant whether the employee changed plans to accommodate work-related cell phone usage. Also, the details of the employee’s cell phone plan do not factor into the liability analysis. Not only does our interpretation prevent employers from passing on operating expenses, it also prevents them from digging into the private lives of their employees to unearth how they handle their finances vis-à-vis family, friends, and creditors. 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.

In short, employers must reimburse employees for “some reasonable percentage” of the employee cell phone bill if the employee uses that personal cell phone for work calls. Of course, the court did not provide any standard for what constitutes “some reasonable percentage,” which leaves employers with the difficult question: How much is “reasonable”? Considering the fact that Labor Code 2802 allows employees to recover attorney fees incurred in “enforcing the rights granted by” that section, getting the answer wrong could have serious consequences for employers.

If you would like to discuss employers’ options for dealing with the *Cochran* decision, or with Labor Code 2802 in general, please contact the author of this article.

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