



CBA Regulatory Compliance Bulletin

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Employers Must Reimburse For Required Cell Phone Use

A California appellate court has ruled that an employer that requires its employees to use a cell phone for work-related calls is required to pay a reasonable percentage of the employee's cell phone bill. In *Cochran v. Schwan's Home Service, Inc.* 1500 "service manager" employees filed a class action against Home Service on the basis that their cell phone use was necessarily incurred to discharge their duties, and that Home Service knew or had reason to know of the use but did not exercise due diligence to reimburse.

California Labor Code Section 2802 states in 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. . ."

The purpose of this statute is to prevent employers from passing their operating expenses on to their employees. One contested issue was whether it mattered if an employee has a cell phone plan with unlimited or limited minutes. In other words, is the obligation to reimburse limited to where the employee incurred an extra expense that he or she would not have otherwise incurred absent the job? The court held it did not matter. If use was necessary, then the reimbursement owed is a reasonable percentage of their cell phone

bills. Whether use was necessary may depend on the reasonableness of the employee's choices. The trial court judge in this case had denied class certification (that is, did not allow the employees to consolidate the case against Home Service) because employees had different phone plans or their phone bills were paid by someone else. The appellate court reversed and ordered certification of the class:

"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-a-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."

While this decision involved the use of telephones, a similar inquiry could apply to the employee's use of other communications devices such as tablets. The statute itself is broader, and uses the term "all necessary expenditures or losses." The decision becomes final as of September 11, 2014, unless it is successfully appealed.

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