

“Can You Hear Me Now?” Testing the Boundaries of Expense Reimbursement Requirements in California’s New Remote Work Environment

Article By:

Jamie R. Rich

Rowena Santos

Amid the novel coronavirus (COVID-19) pandemic, a vast number of California employers have shifted their workforces from on-site work environments to “work from home” arrangements. As a result, many California employees and employers are grappling with the new normal: work from home business expenses. In California, employers must reimburse employees for necessary and reasonable business expenses. L.C. 2802. But, what does this mean in the unprecedented COVID-19 era?

In general, employers need only reimburse employees for “necessary” and “reasonable” expenses—there is no requirement to reimburse expenses that are incurred voluntarily. When an employee is permitted to work from home, but is not required or encouraged to do so, the employer generally is not required to reimburse the employee for associated expenses when the employee could avoid them by going to work.

In a COVID-19-regulated environment, when employers require their employees to work from home—even if such a requirement is mandated by a shelter-in-place order—they may need to reimburse those employees for expenses incurred while carrying out their duties at home. This might include, for example, expenses for personal cell phones, Wi-Fi, office equipment, and supplies. Employers should consult with legal counsel to determine whether COVID-19 regulations require them to enter into mandatory work from home arrangements with employees. For example, some orders provide that essential employees who can perform work remotely should do so rather than go to the office or other work site.

When entering into mandatory work from home arrangements:

- Employers should consider whether to reimburse employees a reasonable percentage of their expenses for mandatory business use of personal cell phones or Wi-Fi.
- Employers should consider what supplies and equipment are truly necessary. Allowing employees to submit expenses for reimbursement is just one option. Allowing employees to

take home office supplies and equipment on a temporary basis (e.g., computers, printers, printer paper, pens, company-owned mobile hot spot, etc.) is one of several options worth consideration. Whatever solution an employer chooses, it should aim to avoid the need for employees to go out and purchase these items on their own. Note that if the employee wants to purchase supplies or upgrade equipment solely for his or her own convenience (e.g., an extra monitor, a wireless mouse, or an ergonomic chair) such expenses are generally deemed not “necessary.” (Exceptions may apply when a reasonable accommodation is sought).

- As counties begin to reopen amid the pandemic, employers should consider whether their business needs will allow them to shift to long-term voluntary work-from-home programs, or a rotating schedule that allows employees to choose to work remotely at certain times. Such arrangements may reduce the need for reimbursement.
- Employers should have clear, written policies that help employees understand which business expenses are necessary and reasonable. For example, employers should consider requiring employees to obtain written approval before making business-related expenditures (or a requirement to do so if the expense exceeds a certain amount). Employers should also consider requiring substantiation of expenses on an ongoing basis.

As employees' work locations continue to shift and change, California employers should revisit their expense reimbursement policies and practices and update them to account for the new normal.

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