

The following is a synopsis of a new California Court of Appeal case which held that California Employers must reimburse cell phone expenses of employees.

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By Gerald A. Griffin, Esq.

In *Cochran v. Schwan's Home Service, Inc.*, the California Court of Appeal ruled unequivocally that an employer must cover the cost of an employee's work-related cell phone calls. The court held that *Labor Code Section 2802* requires an employer to reimburse an employee who uses his or her personal cell phone for work-related calls. The court held that the requirement even extends to an employee who has a cellphone plan with unlimited minutes as otherwise the employer would receive a windfall because it would be passing on its operating expenses on to the employee.

The court underscored the extensive nature of its holding by explaining that, "if an employee is required to make work-related calls on a personal cell phone, then he or she is incurring an expense for purposes of *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. Hence, all that an employee has to do to pass on the expense is to 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.

The court was not instructive with respect to the appropriate rate of reimbursement. The court merely held that the employer "must pay some reasonable percentage of the employee's cell phone bill." Thus, if the employee uses a personal cell phone as opposed to an employer-paid cell phone, the amount of reimbursement due can become a complicated issue. Nonetheless, it would behoove employers to closely look at what amount would fully reimburse an employee in a particular situation. For instance, inasmuch as the *Cochran* case requires the employer to reimburse a "reasonable percentage" of the employee's cell phone bill, it seems that the court is requiring payment of a portion of the employee's base charges regardless of whether the employee has limited or unlimited minutes. An alternative would be employer provided cell phones which would be used strictly for work-related calls and messages. That method avoids any uncertainty over the amount of reimbursement due.

For more information contact:

[Gerald A. Griffin, Esq.](#)

Gibbs Giden Locher Turner Senet & Wittbrodt LLP

1880 Century Park East, 12th Floor

Los Angeles, California 90067

Phone: (310) 552-3400

email: jgriffin@ggltsw.com

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