



California Court Mandates Reimbursement for Employees' Use of Personal Cell Phones¹

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On August 12, 2014, California's Second Appellate Division held that employers must reimburse employees when they use their personal cell phones for work-related phone calls. In Cochran v. Schwan's Home Service, Inc. the California Court of Appeal (2d Dist.) held that under California Labor Code § 2802, employers who require employees to use personal cell phones must reimburse those employees for a reasonable portion of those bills - *regardless of whether the employees actually incur any out-of-pocket expenses because they have unlimited voice or data plans for their personal cell phone.*

The Cochran decision could give rise to class action cases against employers who are not reimbursing employees when they use personal cell phones for business purposes. While the expenses associated with one individual employee's work-related cell phone calls may be minor, these expenses can be significant when aggregated across a workforce. This article provides a few recommendations that employers can take to comply with California law regarding an employee's use of a personal cell phone for work-related purposes.

I. THE CASE

In Cochran, a customer service manager for Schwan's Home Service, Inc. filed a lawsuit on behalf of 1,500 other similarly situated employees seeking damages for non-reimbursed, work-related phone calls made using personal cell phones. When the plaintiff asked the trial court to certify the class, the trial court ruled that class certification was improper because, amongst other reasons, the class lacked "commonality," a necessary requirement in both State and Federal class actions. Specifically, the trial court reasoned that some members of the class would be ineligible for damages because they did not incur any out-of-pocket expenses when making the work-related phone call(s) due to their enrollment in unlimited voice and data plans for their cell phones. The appeals court, however, disagreed. The appeals court held as a matter of law that an employer must reimburse an employee "some reasonable percentage of the employee's cell phone bill" if the employee uses his/her cell phone for work-related phone calls.

¹ We would be pleased to provide a copy of the case discussed in this article upon request. This article is designed to provide one perspective regarding recent legal developments, and is not intended to serve as legal advice, nor does it establish an attorney-client relationship with any reader of the article where one does not exist. Always consult an attorney with specific legal issues.

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II. RECOMMENDATIONS

Given the proliferation of personal cell phones in today's society, there are a few preliminary steps California employers should take in response to the Cochran decision.⁵

First, if an employer requires its employees to use personal cell phones for work-related business, the employer should plan to pay some "reasonable" amount of the employee's cell phone bill. California law does not currently define what is a "reasonable reimbursement," but the Cochran court advised that the employer must pay "some reasonable percentage of the employee's cell phone bill" in order to be in compliance with the California Labor Code. Employers should consult legal counsel for assistance in determining what is a reasonable reimbursement for work-related phone calls under California Labor Code § 2802.

Second, employers should consider asking employees to keep track of information regarding work-related phone calls on their personal cell phones, such as: (a) who they called; (b) the duration of the phone call; and (c) whether any long distance or roaming charges were incurred as a result of the phone call. This information will help the employer in determining what constitutes a reasonable reimbursement for those without "unlimited" plans.

Finally, employers that do not want to pay additional expenses associated with an employee's personal cell phone should update all employee handbooks and other applicable policies so as to make clear that employees are prohibited from making work-related phone calls on their personal cell phones.

III. ADDITIONAL CONCERNS REGARDING PERSONAL CELL PHONES

Employers should remember that personal cell phone use for business purposes may also implicate additional concerns for non-exempt employees (e.g. hourly employees). The Fair Labor Standards Act ("FLSA") requires that employers pay non-exempt employees "time-and-a-half" for each hour worked over forty hours in a given work week. Employers must maintain accurate records regarding employee time worked in order to comply with the FLSA. These records must reflect all time worked by the employee, including time outside of the office participating in work-related phone calls. If employees participate in a work-related call on their cell phones during a time period when they are not scheduled to work, employers must pay wages to the employees for the time they spent on the work-related call. Written policies that prohibit the use of personal phones for business purposes and/or require the employee to document time spent conducting business on a personal phone can increase the odds of complying with both the FLSA and the California Labor Code.

IV. CONCLUSION

Under current law, California employers must reimburse employees who use a personal cell phone for work-related purposes. Employers should consult an attorney to develop policies that govern the use of personal cell phones and to establish a reasonable rate of reimbursement.

⁵ While employers in all States would be prudent to adopt the recommendations outlined in this Article, the recommendations in this Article are tailored to California employers. Employers in all States should consult legal counsel regarding their State's laws about reimbursing employees for work-related cell phone calls.