

**EMPLOYERS' CONNECTION: REIMBURSEMENT FOR EMPLOYEES' PERSONAL  
CELL PHONE USE MAY NOW BE REQUIRED**

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The California Court of Appeal for the Second Appellate District, Division Two, recently held in a case called *Cochran v. Schwan's Home Services, Inc.* that, pursuant to Labor Code section 2802, employers must reimburse "a reasonable percentage of" their employees' cell phone bills when their "employees must use their personal cell phones for work-related calls." This requirement to reimburse applies regardless of whether a person or entity other than the employee (e.g., the employee's parents) actually pays for the cell phone bill. Also, it makes no difference that the employee's cell phone plan already provides for unlimited minutes.

Section 2802 mandates that an employer reimburse its employees "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."

(Note: the "unlawful" language in this section may be useful for an employer in arguing that no reimbursement is owed when an employee uses his or her cell phone while driving with the cell phone in hand since it is well-known that using a cell phone while driving without a hands-free device is unlawful. However, clearly, there are multiple situations in which it may be necessary for an employee to use his or her personal cell phone for work while not driving.)

In seeking to comply with section 2802, an "employer may consider not only the actual expense that the employee incurred, but also whether each of those expenses was 'necessary,' which in turn depends on the reasonableness of the employee's choices." Therefore, employees cannot demand reimbursement of all personal cell phone usage simply because they used their personal cell phone while on the clock.

However, employers should use caution when faced with a questionable situation as to whether the cell phone activity and expense were necessary. If an employee or class of employees sue for reimbursement and prevail, section 2802 provides that the employee(s) will be entitled to interest on the unpaid “necessary expenditure or loss,” and these expenditures and losses “shall include all reasonable costs, including, but not limited to, **attorney’s fees** incurred by the employee enforcing the rights granted by this section.” (Emphasis added.)

As the court admitted, the calculation of damages (i.e., what percentage of an employee’s cell phone bill the employer owes) raises “issues that are more complicated.” However, to establish that he or she is entitled to any reimbursement, “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 the holding for this case may be later challenged, the message for now to employers has gotten a little stronger reception: you may be getting a call from your employees’ lawyers if you’re not careful!