

CALIFORNIA EMPLOYER ON THE HOOK FOR EXPENSE REIMBURSEMENT DURING COVID-19 STAY-HOME ORDERS: 4 KEY TAKEAWAYS

Insights
Jul 24, 2023

On the heels of [a rare win for employers](#) regarding COVID-19 liability, a California appellate court was quick to remind employers in the state that there's no shortage of pandemic-related requirements still in place. This is particularly true when it comes to the California Labor Code and wage and hour claims – including claims for work-related expense reimbursement. Read on to learn more about a recent July 11 ruling on an employer's liability for business expense reimbursement during stay-home orders and your four key takeaways from the decision.

Pandemic Raised Unique Compliance Questions

Under [the California Labor Code](#), employers must reimburse employees for "all necessary expenditures or losses" they incur as a direct result of carrying out their job duties or following employer directions. As employees transitioned to remote work in compliance with various COVID-19 stay-home orders in March 2020, questions arose as to whether employers had to reimburse employees for internet access, telephone service, and computers and other equipment.

Some speculated how far this requirement might extend: Would employers be required to reimburse for utilities, the cost of additional heating or cooling, mortgage or rent? What about the value of a room that could have otherwise been rented out had the employee not had to set up a home office?

The consistent advice has been to reimburse employees who are required to work from home some *reasonable*

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amount for expenses incurred. But a recent case tested whether employers were required to reimburse expenses incurred due to remote work performed under a statewide stay-home mandate. Specifically, in [*Thai v. International Business Machines Corp.*](#), IBM argued it was absolved of liability because it was the Governor's order – not IBM – that caused the work-from-home expenses to be incurred.

Court Reminds Employers of Pay Obligations

A state appellate court, however, rejected this argument in a July 11 decision. Although IBM argued that it was responsible only for expenses it "directly caused," the court noted that "the obligation does not turn on whether the employer's order was the proximate cause of the expenses; it turns on whether the expenses were actually due to performance of the employee's duties." While it may be the case that the Governor's order was the reason the employees had to work from home, the court found nothing in the statute that exempted such expenses from the reimbursement obligations.

The court distinguished cases discussing "training costs" for certain required licenses, noting that employers *are* required to "bear the cost of training that is not required to obtain the license but is solely to enable the employee to discharge [their] duties." Additionally, unlike state-required licenses – which workers can take with them from employer to employer – the work performed from home was strictly for the benefit of IBM.

Finally, the court pointed out that IBM did not dispute that the expenses at issue were the type of expenses IBM paid for at its offices. So, the fact that the expenses were incurred at the employees' homes because of the stay-home order did not change IBM's reimbursement obligations, according to the court.

4 Takeaways for Employers

As you continue to review your obligations under the California Labor Code, here are four key points to keep in mind in light of this ruling:

1. This case serves as a reminder to California employers to be proactive about reimbursing necessary expenses incurred by employees while they are performing their duties, whether they have returned to the office or

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continue to work remotely. This includes internet use, cell phones and telephone lines, laptops and computers, as well as other items such as business mileage.

2. Don't forget that reimbursement obligations apply to both non-exempt and exempt employees.
3. For now, California employers have clear guidance to reimburse all necessary business expenses that an employee incurs related to the discharge of their duties. Contact your FP attorney if you have any questions about what expenses may be covered.
4. You should note that there are still open questions as to how far reimbursement requirements might extend. So, stay tuned for further developments.

Conclusion

If you have questions about potential liability, contact your Fisher Phillips attorney, the author of this Insight, or any attorney in any one of [our six California offices](#). We will continue to monitor developments and provide updates as appropriate. Make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information.