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California Court of Appeal Clarifies Employer's Obligation to Reimburse Expenses Depends on Whether They Were a Direct Consequence of Job Duties, Not Proximately Caused by Employer



By Kristi Thomas on July 17, 2023

POSTED IN EXPENSE REIMBURSEMENT, PAGA, WAGE AND HOUR

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On July 11, 2023, the California Court of Appeal in ***Thai v. IBM*** held that whether an employer is obligated to reimburse expenses incurred by an employee working from home turns on whether the expenses were a direct consequence of the discharge of the employee's job duties, not on whether the expenses were directly caused by the employer. This case is important for all employers whose workforce suddenly began working from home as a result of the COVID-19 pandemic, and employers who continue to permit employees to work from home today.

[Background of Thai v. IBM](#)

Thai, a former employee who worked for IBM required internet access, a computer, and a telephone headset, among other things, to perform his job duties. IBM provided these items to its employees working in its offices. Then the COVID-19 pandemic hit. On March 19, 2020, **Executive Order N-33-20** was signed by Governor Newsom, which required all individuals except for critical infrastructure sector workers to stay home. IBM directed its workers, including Thai, to work from home in accordance with the Order. Thai alleged that he and other employees personally paid for the internet and telephone services and other items necessary to do their jobs from home, but were not reimbursed by IBM.

A lawsuit was filed in which Thai and another worker asserted a cause of action under the California Private Attorneys General Act (PAGA), alleging IBM failed to reimburse employees for work-from-home expenses incurred following Governor Newsom's Order in violation of Labor Code Section 2802. The statute requires employers to reimburse employees for reasonable and necessary business expenses incurred by the employee in direct consequence of the discharge of the employee's duties. IBM demurred, and the San Francisco County Superior Court sustained the demurrer, noting, "Plaintiffs are unable to allege IBM's instructions to employees to work from home [were] the independent, direct cause of Plaintiffs and the Aggrieved Employees incurring necessary business expenses . . ." The Court concluded that the Governor's Order was an "intervening cause" and IBM was merely instructing employees to work from home in response to the Order. Thus, there was no requirement that IBM reimburse employees for their work-from-home expenses under Section 2802.

The Court of Appeal's Decision

On appeal, the Court of Appeal reversed the trial court's ruling in favor of the employer. Plaintiffs argued that the trial court's ruling was inconsistent with the plain language of Section 2802. The relevant statutory language reads, "An employer shall indemnify his or her employee 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 . . ."

Plaintiffs argued that the legal inquiry required by the statute is whether the employee incurred expenses in "direct consequence of the discharge of his or her duties," not whether the employer itself was the but-for cause of the employee working from home. In its published decision, the Court of Appeal agreed, indicating that under the plain language of the statute, an employer's obligation to reimburse turns on whether the expenses were actually a consequence of the employee's work duties, not on whether the employer's order to work from home was a proximate cause of the expenses.

IBM argued the work-from-home expenses must be "inherent" to its business or for its "benefit" to be reimbursable, and that they were not here given that working from home was for a public health benefit. The Court rejected the argument, noting that Section 2802 does not contain the "inherent" or "benefit" language, but even if such language was consistent with the statute, the expenses here were inherent to IBM's business and the work was performed for IBM's benefit. The Court also rejected the

employer's attempts to equate its employees' work-from-home expenses to licensure expenses that are portable to different employers and not a consequence of the employee's work duties for a specific employer, as well as expenses that are generally usable in all circumstances.

The Court did not address what expenses are considered "reasonable" or the extent to which an employer must reimburse an employee for expenses incurred for work and personal reasons.

Takeaway

All employers whose employees worked from home during the COVID-19 pandemic and/or continue to work from home today should review their telecommuting and expense reimbursement policies in light of this decision to ensure they are in compliance with Section 2802. Employers should consult with experienced legal counsel for guidance due to the uncertainty in the law with regard to expense reimbursement in the hybrid work world.

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