

Compliance Calling: Personal Cell Phone Use for Business Purposes and Expense Reimbursement Laws

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Remote and hybrid work, once a novelty, is now integrally incorporated into how many employees work effectively forever. Employers and employees alike have settled into longer term remote working arrangements that have nothing to do with the en masse Covid arrangements we all scrambled to make if jobs allowed and are now related only to employees' quality of life. Many employers and most employees view this as win-win.

A growing comfort with mobile work, however, should not encourage employers to ignore admittedly boring but lethal legal missteps that apply to remote work in ways that are often ignored. Among the most boring, as the phrase signals: *reimbursement of business expenses* (including cell phone charges). And as with many things legal, the dullness of the subject camouflages real economic liabilities for employers.

Arguably, nothing more clearly illustrates the blurred lines created by remote work than the use of personal mobile cell phones for business-related purposes. Often when employees work from home, they must use a personal cell phone to fulfill the duties of their position. Are employers then required to reimburse the employee for use of their personal cell phone on work-related matters? California employers may be well aware that the answer to this question is yes, and that non-compliance risks class action liability. However, employers across the country should know that the list of other states with similar statutes is not short.

What Federal Law Requires (and Doesn't)

Federal law does not have an explicit expense reimbursement requirement. However, an employer violates the Fair Labor Standards Act (FLSA) if an employee's unreimbursed business expenses bring their wages below the applicable minimum wage or results in unpaid overtime. As the obligations on employers to reimburse expenses are not particularly onerous under the FLSA, state law has supplied higher standards for business expense reimbursements.

California: The Center of Employee Reimbursement Litigation

California's Labor Code § 2802 requires employers to reimburse employees for *all* necessary business expenses. Employees may pursue private civil action for an employer's failure to comply with the statute, including class action litigation. In 2014, a state appellate court in California permitted employees to bring a class action suit against an employer for failing to reimburse expenses incurred in relation to the use of personal phones for work purposes. In certifying the class

and allowing the claims to proceed, the court stated that “when employees must use their personal cell phones for work-related calls, Labor Code section 2802 requires the employer to reimburse them.” *Cochran v. Schwan’s Home Service, Inc.*, 228 Cal.App.4th 1137, 1140 (Cal. App. 2014). The court even interpreted § 2802 to apply in situations where the employee already has an unlimited plan and incurs no additional out-of-pocket cost for business use of their personal cell phones.

This interpretation has fueled large class actions in California, particularly as remote work and BYOD (Bring Your Own Device) policies have become widespread. Employers who fail to provide stipends or reimbursements for phone and internet use have faced multimillion-dollar class actions. See e.g., *Krug v. Bd. of Trustees of Cal. State Univ.*, 110 Cal.App.5th 234 (Cal. App. 2025).

Other States With Expense Reimbursement Obligations

Other states have passed similar expense reimbursement laws. While the language varies, the common thread is that employers must cover necessary expenses incurred in the course of employment. Although many of these states have not seen cases applying such statutes in the context of personal cell phone reimbursements, courts could interpret these statutes to include obligations to reimburse cell phone and internet costs in the remote or hybrid work setting.

For example, the Illinois Wage Payment and Collection Act (IWPCA) requires employers to reimburse all necessary expenditures within the employee’s scope of employment. Illinois courts have suggested that a company’s failure to reimburse an employee’s submitted expenses for cell phone payments, Internet, and other home office expenses may constitute a violation of the IWPCA. See *Prokhorov v. IIK Transport, Inc.*, 2024 WL 6870247, at *2 (N.D. Ill. Oct. 18, 2024) (stating that an employee who properly submits a request for reimbursement for cell phone and Internet use may have a claim under the IWPCA if the employer fails to reimburse).

Other states with similarly worded expense reimbursement statutes include:

- Iowa: Iowa Code 91A.3(6)
- Massachusetts: Mass. Gen. Laws ch. 149, § 148A (according to guidance published by the Massachusetts Attorney General, § 148A requires employers to reimburse “unavoidable and necessary expenses”)
- Minnesota: Minn. Stat. § 177.24(4)-(5)
- Montana: Mont. Code Ann. § 39-2-701
- New Hampshire: N.H. Rev. Stat. Ann. § 275:57
- New York: N.Y. Lab. Law § 198-c
- North Dakota: N.D. Cent. Code § 34-02-01
- South Dakota: S.D. Codified Laws § 60-2-1
- Washington D.C.: D.C. Mun. Regs. tit. 7 § 910
- Seattle, Washington (local ordinance): Seattle Mun. Code § 14.20.020

Practical Compliance Steps for Employers

As evidenced by litigation in California, noncompliance with expense reimbursement laws can create class action risk and potentially large liabilities. Employers should be vigilant regarding the applicable expense reimbursement laws in their state(s) of operation, and consider the following actions:

- **Audit policies and practices:** Do you require employees to use personal phones for work?
- **Implement stipends or reimbursement programs:** Even a modest monthly stipend can mitigate risk.
- **Monitor state law developments:** The list of states with reimbursement requirements is not short—and growing.
- **Train managers:** Ensure they understand when requiring personal device use triggers reimbursement obligations.

If you have any questions about the laws in your particular state or your current policies relating to expense reimbursement, please contact a member of the Kelley Drye Labor and Employment team.