

# REIMBURSING EMPLOYEE REMOTE WORK COSTS

Nicole M. Krueger & Jo Ellen Whitney | 9/10/2020 | Davis Brown Law Firm

Working from home continues to bring up new questions employers may not have had to consider before, or at least not on such a wide scale. Both employees and employers are wondering what remote work or telework expenses are reimbursable, if at all.

Businesses with remote work employees across several states also need to think about each state's laws on how to address and reimburse expenses. States vary in terms of what they might consider to be a work from home expense and whether those expenses are automatically reimbursable to the employee.



## Reimbursing Employee Remote Work Costs

### Iowa

Iowa has a fairly narrow definition of telework expenses and regarding reimbursement, Iowa code specifically provides:

"Expenses by the employee which are authorized by the employer and incurred by the employee shall either be reimbursed in advance of expenditure or be reimbursed no later than 30 days after the employee's submission of an expense claim."

If the employer refuses to pay all or part of each expense, then they need to explain why to the employee within the same time period in which expenses are paid. In general, this means only employer-authorized expenses would be eligible for reimbursement. Authorization could be granted through policy or program.

### Illinois

The Illinois Wage Payment and Collection Act requires employers to reimburse an employee for all necessary expenditures incurred within the employee's scope of employment and directly related to services performed for the employer. Necessary expenditures include, "all reasonable expenditures or losses required of the employee in the discharge of employment duties and that inure to the primary benefit of the employer."

Employees are required to submit documentation regarding any necessary expenditures within 30 days of incurring the expense unless the employer allows a longer period of time in its written policies. If supporting documentation is not available, the employee can submit a signed statement regarding the expense.

The employer is not responsible for reimbursement if the employee fails to comply with the written reimbursement policy. The employer is only responsible for reimbursement if they authorized or required the employee to incur the necessary expenditures.

For example, if an employee follows the policy requesting an additional computer monitor and the employer approves, that's reimbursable. But if the employee decides to buy a monitor and requests reimbursement without complying with policies, and the employer did not authorize the purchase, the employer does not need to reimburse the employee.

Additionally, the employer is not responsible for paying any portion of the expense that exceeds specific reimbursement guidelines in its written policy as long as the employer does not institute a policy of no reimbursement or only de minimis reimbursement.

## **California**

California has one of the most complicated and well-defined employee expense reimbursement laws. Employers must reimburse an employee for all necessary expenditures incurred in direct consequence of completing his or her duties. Necessary expenditures are defined as reasonable costs incurred by the employee. The express purpose of this statute is to prevent employers from passing their operating expenses on to their employees.

Employers are required to reimburse employees for personal cell phone costs if the employee is required to use his or her personal cell phone for work-related calls. This would be true even when the employee's cell phone plan has unlimited minutes and even if the employee's use of the phone for work-related calls did not result in any additional fees beyond what the employee would have normally paid for his or her plan. Case law states that the employer is required to pay a reasonable percentage of the bill.

Employers are permitted to account for reimbursement by providing an increase in base salary rate or commission rate provided the employer, "establishes some means to identify the portion of overall compensation that is intended as expense reimbursement, [and] that the amounts so identified are sufficient to fully reimburse the employees for all such expenses actually and necessarily incurred." Importantly, the employer must explain the calculation of these benefits to its employees.

Under California law, the determination of whether or not certain expenses are necessary is fact-specific and depends on the totality of the circumstances, but claims

have been made for cell phone service, internet access, shipping, office supplies, desks, chairs, and similar items.

### **The Big Picture**

With telework or working from home more common during the pandemic, employers need to think carefully about their reimbursement policies and how these intersect with state law.

Seven states, including the three listed above as well as the District of Columbia, Massachusetts, Montana, and New York all have statutes concerning reimbursement for business expenses incurred by employees including those who telecommute. Each of these states makes it clear that a written policy regarding how to handle reimbursement is critical to employer compliance.

Employers recently adopting work from home should consult with an employment attorney to review their existing policies and draft updates to clarify expense reimbursement. This is particularly important if there are employees working from home in multiple states and your current policy doesn't address the particularities of each state's laws.