

THE LAW OFFICES OF ALEX W. CRAIGIE

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A New Case Reminds Employers About Reimbursement for Necessary Expenditures, Including For Cell Phone/Data Use

Most employers understand that the law, specifically California Labor Code section 2802, requires employees to be reimbursed for necessary expenditures or losses incurred in the course of doing their job. The California Court of Appeal recently clarified that this rule applies when employees are required to use their own cell phone or personal data device, even if a third party pays the bill or the call/data plan provides for bulk or unlimited minutes or data usage.

In *Cochran v. Schwan's Home Service*, a number of employees sought to bring a class action against Schwan's because they were not reimbursed for work-related use of their personal cell phones. In determining whether a class action was appropriate, the trial Court assumed that where employees did not purchase separate cell phone plans for work use, or where a family member or some third party paid the phone/data usage bill, the employee had no expenditure and therefore incurred no loss.

On August 12, 2014, the California Court of Appeal issued an opinion in the *Cochran* case, holding that this assumption was wrong. Specifically, the Court said that reimbursement is required, even where the phone/data bill is for unlimited use or paid by another. "Otherwise, the employer would receive a windfall because it would be passing its operating expenses onto the employee."

What Should California Employers Do?

The *Cochran* Court provided guidance on how employers can comply with their reimbursement obligation for work-required cell phone/data device use. It said, "[T]o be in compliance with section 2802, the employer **must pay some reasonable percentage** of the employee's cell phone bill."

We recommend employers establish a clear policy, evenly applied to all employees, about work-related cell phone and/or data device use and reimbursement. This policy should be easy to understand and apply, and included in the employer's up-to-date employee handbook.

We also recommend employers take this opportunity to review and, if necessary, correct or update their reimbursement policies for all work-related expenditures. If a major correction is required, we encourage employers to involve a skilled employment attorney to develop a strategy to shape and communicate the change in ways that will not invite claims or lawsuits based on past policies or conduct.

With locations in Los Angeles and the Central Coast, **The Law Offices of Alex W. Craigie** helps California employers prevent, address and resolve employment disputes in a logical and cost-effective manner. Reach us at (323) 652-9451 or at Alex@CraigieLawfirm.com.

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