

# Employer must reimburse work-from-home expenses incurred during pandemic shutdown

By Dan Eaton

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The California Court of Appeal recently ruled in *Thai v. International Business Machines Corporation* that IBM had to reimburse its employees for Internet access and other computer-related expenses needed to perform their jobs from home while Gov. Gavin Newsom's March 2020 shutdown order during the COVID-19 pandemic was in effect. IBM argued it had no responsibility for such expenses because the expenses resulted from a government mandate, not an IBM mandate.



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The trial court agreed with IBM that the Governor's order was an "intervening cause" of the employees' expenses, excusing IBM's duty under California law to reimburse for them. Here's why the court of appeal disagreed and reversed dismissal of the employees' claim under the Private Attorneys General Act for penalties for failing to pay the employees' work-from-home expenses.

## California law requires employers to bear work-related expenses

Labor Code section 2802(a) requires an employer to reimburse its employees "for all necessary expenditures ... incurred by the employee in direct consequence of the discharge of his or her duties." To prove an employer violated that law, an employee must show: (1) the employee made expenditures or incurred losses; (2) in direct consequence of the employee's discharge of his or her duties or obedience to the directions of the employer; and (3) the expenditures or losses were necessary.

Section 2802(c) limits reimbursable losses and expenses to those that are "reasonable." That includes reasonable attorney's fees employees incur to enforce their right to reimbursement.

## What is an expense incurred as a "direct consequence" of a job?

The only question the appellate court considered was whether the work-from-home expenses necessitated by the Governor's shutdown order were incurred as a "direct consequence" of the employees' duties. The court did not consider what expenses could be considered "reasonable costs" of working from home or the extent to which "an employer must reimburse an employee for expenses incurred for both personal and work purposes."

The court rejected IBM's contention the company could only be responsible for expenses it — and not the government — "directly caused" the employee to incur. The statute, said the court, is says no such thing.

The employer's duty to reimburse depends only "on whether the expenses were actually due to the performance of the employee's duties." The IBM employees incurred the expenses to enable them to perform their duties from home. That made the expenses reimbursable.

The court continued: "It may be true that the Governor's March 2020 order was the 'but-for' cause of certain work-from-home expenses, but nothing in the statutory language can be read to exempt such expenses from the reimbursement obligation. Effectively, section 2802(a) allocates the risk of unexpected expenses to the employer...." That, said the court, is what the Legislature intended.

The court of appeal said its ruling was not inconsistent with a 2021 federal trial court holding that an employer was not responsible for reimbursing stay-at-home employees for the cost of masks and hand sanitizer. The federal court in that case held the employer was not responsible for those items because the items were "generally usable" beyond the employees' work duties. The operating costs for which IBM employees were claiming reimbursement, by contrast, were for performing their actual duties for IBM at home.

That court did not decide the full range of reimbursable costs employees may incur in "direct consequence" of the discharge of their duties. The court said future cases would address whether the employee alone may be responsible for "expenses that an employee was already incurring for personal reasons" before the shutdown order.

### **What the ruling means for reimbursement policies in shutdown period and beyond**

This ruling comes as far more Californians work from home than before the pandemic. Employers permitting remote work must reimburse all reasonable work-related expenses, just as for permissible remote work before the pandemic. Employers that did not do this during government-mandated remote work may now face reimbursement liability they did not anticipate.

COVID-19 continues to move faster than the speed of law. But the pandemic is over. And the law is gaining ground.

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