

Calif. Cos. May Have To Reimburse More Remote Work Costs

By **Sonya Goodwin** (August 16, 2023)

In the early months of the COVID pandemic, state, county and city officials across the country ordered workplaces to close and instructed companies to transition employees to remote work. They did so at the time out of an abundance of caution, but three years later many workplaces continue to accommodate remote work.

Now, working from home is permitted by many industries as an accommodation to employees rather than a situational necessity.

The rapid and wholesale shift to remote work back then, however, brought with it a host of logistical challenges. Were employers required to provide office equipment and administrative support for employees working from home? Were workers obligated to maintain the same hours and schedules as they did in the workplace? And, most importantly, who should bear the costs associated with remote work?



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These types of issues led to the California Court of Appeal, First Appellate District decision last month in *Thai v. International Business Machines Corp.*

Case Background

On March 19, 2020, California Gov. Gavin Newsom issued an executive order requiring the state's residents to stay at home except as needed to maintain operations in critical sectors.[1] Consequently, IBM directed its employees, including an employee named Paul Thai, to leave the office and continue performing their jobs from home.

In order to do his job, Thai — along with thousands of other IBM employees sent home from the company's San Francisco offices — needed internet access, telephone service, a telephone headset, a computer and accessories, and other support.

But when he sought reimbursement from his employer for the costs of such equipment and services, IBM denied his request. Thai and his coworkers were then required to personally pay for the services and equipment needed to do their jobs.

This was a violation of state law, according to the California appeals court. In the Thai case,[2] filed under California's Private Attorneys General Act, the court ruled unanimously for the employees. It flatly rejected IBM's argument that the governor's order constituted an "intervening cause" of the work-from-home expenses that absolved IBM of all liability for reimbursement.

California law, the court said, protects workers from having to absorb business expenses incurred in order to do their jobs. Specifically, Labor Code Section 2802[3] requires an employer to indemnify an employee "for all necessary expenditures" the employee incurs in the course of discharging his or her duties or complying with the employer's directions. When IBM instructed its employees to do their jobs from home, "the work performed was for the benefit of IBM."

The court cited *Gattuso v. Harte-Hanks Shoppers Inc.*,[4] a 2007 opinion in which

the California Supreme Court noted that when Section 2802 was amended in 2000, its purpose was to "prevent employers from passing their operating expenses on to their employees."

In the 2022 case of *Williams v. Amazon.com Services LLC*,^[5] an Amazon employee sought reimbursement under Section 2802 for expenses he incurred while working from home during the COVID-19 pandemic. Just like IBM, Amazon argued that the expenses were due to the government stay-at-home orders, not anything Amazon did.

The U.S. District Court for the Northern District of California rejected that argument. What mattered, it said, was whether the employee incurred the expenses because he was performing job duties or following Amazon's orders: "Amazon expected [the plaintiff] to continue to work from home after the stay-at-home orders were imposed. That is sufficient to plausibly allege liability, even if Amazon itself was not the but-for cause of the shift to remote work."

Unless the most recent decision is reversed on appeal, IBM and countless other California employers will be required to pay work-related costs incurred by their employees who were sent home during the pandemic. This could be just the beginning of their reckoning.

The State of the Law

Federal law does not expressly require employers to pay work-related expenses for remote employees, but under the Fair Labor Standards Act,^[6] an employer could be obligated to reimburse an employee's work expenses if those expenses cause the employee's earnings to fall below the federal minimum wage.

A few states — including California, Illinois,^[7] New York^[8] and Pennsylvania^[9] — require employers to reimburse work expenses incurred by employees who are required to work from home. Many cities and localities also impose such requirements on employers. Additional states^[10] have statutes that obligate employers to cover expenses incurred in connection with work; some of these states may now consider expanding the obligation to remote expenses.

Before the pandemic, it may have been hard to make a case for reimbursement of work-from-home expenses unless the entire organization was required to work remotely. But COVID changed the public perception of alternative work arrangements. These days, large numbers of employees are voluntarily choosing to work at least some portion of their work hours from home, and companies are generally signaling their willingness to accommodate such hybrid or completely remote work.

If the employee is not required — by the state, by the company, or by virtue of a physical or mental disability for which accommodation is provided — to do the job remotely and the employer makes all needed services and supplies available at the worksite, it is unlikely that the employer will be legally obligated to cover the employee's work-from-home expenses. However, employers may still want to consider paying for these expenses for other reasons.

For example, during the "great resignation" of the post-pandemic period, when companies were actively competing for workers, reimbursement of home office expenses may have been a way to retain or recruit employees. Even if no longer legally required to pay remote expenses, companies may still find that it helps both worker morale and their bottom lines to cover these costs.

So what constitutes a necessary expense, and how much do employers need to pay? Many employees working from home instead of at the office have had to rely on their own equipment instead of employer-provided tools. Many have had to purchase new home office equipment and furniture, including computers, printers, desks and chairs. But are items such as home internet and phone service reimbursable if the employee already purchases them for their personal use?

In California, employers are required to pay a reasonable portion of an employee's home internet and phone service if they are required to use these services to conduct their work.^[11] But must they also pay a portion of already purchased equipment, like a computer, printer and furniture? State laws may not provide much guidance, but they generally define "necessary" as any expense required for the employee to complete their job.

As the post-pandemic employment world continues to evolve, we can expect to see more challenges to employers' reimbursement policies, as well as further support for workers who choose a less conventional work model.

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[1] <https://www.gov.ca.gov/wp-content/uploads/2020/03/EO-N-33-20-COVID-19-HEALTH-ORDER-03.19.2020-002.pdf>.

[2] *Thai v. International Business Machines Corporation*, A165390 (San Francisco County Super. Ct. No. CGC-20-588422); <https://law.justia.com/cases/california/court-of-appeal/2023/a165390.html>.

[3] California Labor Code Section 2802; https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=2802.&lawCode=LAB.

[4] *Gattuso v. Harte-Hanks Shoppers*, 42 Cal.4th 554 (2007); <https://casetext.com/case/gattuso-v-harte-hanks-shoppers>.

[5] *Williams v. Amazon.com Services LLC* (N.D.Cal. June 1, 2022, No. 22-cv-01892-VC); <https://casetext.com/case/williams-v-amazoncom-servs>.

[6] <https://www.dol.gov/agencies/whd/flsa>.

[7] Illinois Wage Payment and Collection Act, Section 9.5.

[8] New York Labor Law Section 198-C.

[9] 43 Pa.Stat. § 260.3.

[10] See, e.g., D.C. Municipal Register Title 7 Section 910; Iowa Code 2022, Section 91A.3;

Montana Code 39-2-701; New Hampshire Revised Statutes Title 23 Section 275:57; North Dakota Century Code Section 34-02-01; South Dakota Statute Codified Law 60-2-1.

[11] Cochran v. Schwan's Home Service Inc. (228 Cal. App. 4th 1137 (2014)).