

NIESAR & VESTAL LLP

## Law Alert

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### **California Court of Appeal Clarifies Employers' Expense Reimbursement Obligation**

[California Labor Code section 2802](#) (“Section 2802”) requires employers to reimburse employees for “all necessary expenditures or losses” they incur as a “direct consequence of the discharge of ... [their] duties, or ... [their] obedience to the directions of the employer.” In March 2020, Governor Newsom issued a stay-at-home order, mandating that all non-essential workers work remotely, if possible. Questions arose about whether employers should pay for expenses arising from this government-required remote work.

On July 11, 2023, the California Court of Appeal in [Thai v. IBM](#) ruled in favor of the plaintiff, former IBM employee Paul Thai. Citing Section 2802, the plaintiff argued that IBM failed to reimburse costs associated with the sudden shift to remote work following Governor Newsom’s stay-at-home order, which included internet access, telephone service, a telephone headset, etc. Previously, IBM had provided these items and services to its employees in its in-person office locations. IBM argued that as these costs were not the direct result of a company order, but rather the “intervening cause” of a pandemic lockdown, Section 2802 cannot apply.

The California Court of Appeal held that whether an employer is obligated to reimburse expenses incurred by an employee working from home turns on whether the expenses were a direct consequence of the discharge of the employee’s job duties, not on whether the expenses were directly caused by the employer. Therefore, the employer’s obligation under Section 2802 requires employers to reimburse employees’ necessarily-incurred remote work expenses, even if these expenses are the result of the government’s stay-at-home order.

Although the Court did not address what expenses are considered “reasonable,” this decision is a reminder for all employers to review their expense reimbursement policies. Employers should consult with experienced legal counsel in order to ensure that they are providing employees with reasonable reimbursement for expenses that are a direct consequence of the discharge of the employee’s job duties.

It would seem prudent for employers to make clear to employees that, if the employee chooses to work part of the time at her or his home, the cost of setting up a home office is not subject to reimbursement by the employer. The home office expense is not an expense imposed upon the employee as a condition of employment.

If you have any questions regarding the above-mentioned decision or regarding any practical considerations arising out of this decision, please feel free to contact Gerald Niesar ([gniesar@nvlawllp.com](mailto:gniesar@nvlawllp.com)), Oscar Escobar ([oescoabar@nvlawllp.com](mailto:oescoabar@nvlawllp.com)) or Carolina Aricu ([caricu@nvlawllp.com](mailto:caricu@nvlawllp.com)).

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