

# PUBLICATION

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## Does Your State Require Employers to Foot the Bill for Employees' Remote Work Expenses?

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As the COVID-19 pandemic hit, several states and localities implemented shelter-in-place orders to slow the spread of the coronavirus. Consequently, many workforces were thrust into remote work models without adequate time and resources to develop thoughtful remote work plans and fully contemplate the impact of the shift on their businesses. While a remote work model has key benefits for employers and employees, there are additional considerations, such as costs for employees' laptops, printers, desks, postage, telephone and internet, and office supplies such as paper and ink. While current statistics have shown a decline in new COVID-19 cases, many employers are contemplating continued remote work as part of their new normal. This shift raises the all-important question of who foots the bill for these expenses going forward. That answer depends on where your workforce is located.

### Federal Requirements

Generally, under the federal Fair Labor Standards Act (FLSA), employers are not required to reimburse employees for work-related expenses incurred working remotely. However, an important caveat to that rule is that an employer may not require employees to pay or reimburse their employer for work-related expenses if it would cause the employee's pay rate to fall below the required minimum wage (\$7.25) for hourly employees or salary threshold (\$684 per week) for exempt employees. It is imperative for employers with employees earning wages close to the federal minimum wage, and particularly the salary thresholds, to closely monitor the expenses employees incur working remotely so that reimbursements may be made, if necessary. Since so few states have enacted laws requiring reimbursement for remote work expenses, the general rule under the FLSA will apply in most cases.

The requirements of the Americans With Disabilities Act (ADA) may also alter employer reimbursement obligations. In some instances, telework may be provided to qualified individuals with disabilities as a reasonable accommodation under the ADA. In those cases, the Department of Labor (DOL) has instructed that employers may not require employees to pay or reimburse their employers for remote work costs such as internet access, a computer, additional phone line, and increased use of electricity if telework is being offered as a reasonable accommodation.

### State Requirements

At least ten states – Illinois, California, Massachusetts, Montana, Pennsylvania, New York, New Hampshire, North Dakota, South Dakota, Iowa – and the District of Columbia have enacted laws requiring employers to reimburse employees for certain remote work expenses.

California and Illinois have the most robust and expansive business expense reimbursement laws. As an example, under Section 2802 of California's Labor Code, employers are required to reimburse their employees for "all necessary expenditures or losses incurred by the employee as a direct consequence of the discharge of his or her duties," or to comply with the directives of the employer. The determination as to which expenses are "necessary" is certainly a fact-specific inquiry and will vary depending on the type of job the employee holds. California courts have given us some guidance on which expenses would fall into the category of "necessary

expenses." Interestingly, this law has been interpreted to require employers to reimburse employees for a reasonable percentage of their monthly internet or mobile telephone bill for work-related uses, even in instances where the employee has an unlimited wireless data plan or where their internet bill does not increase based on usage. Notably, employers are only required to reimburse "necessary" expenses in California, so businesses that do not require or encourage employees to work remotely are not required to reimburse these expenses, as employees have the option to work in the office, absent the FLSA and ADA restrictions noted above.

Illinois' law is slightly more limited in scope than California's expense reimbursement law. By way of a recent amendment, the Illinois Wage Payment and Collection Act now requires employers with employees working in the State to reimburse their employees "for all necessary expenditures or losses incurred by the employee within the employee's scope of employment and directly related to services performed for the employer." Similar to California's law, the Illinois law has also been interpreted to require reimbursement for cell phone and internet expenses when employees are required to use their cell phones or internet for work purposes in addition to equipment such as routers, laptops, and printers. Illinois law imposes time restrictions by requiring employees to submit expense reimbursement requests within 30 calendar days of incurring the expense and include sufficient documentation to verify the expense.

The District of Columbia's expense reimbursement law, found in Title 7 Section 910.1 of the D.C. Municipal Regulations, requires employers to pay the cost of purchasing and maintaining any tools that the employer requires to perform the employer's business. Like the laws of California and Illinois, D.C.'s expense reimbursement regulation emphasizes that an expense must be "required" to perform the employer's business to be reimbursable. That means that employers in D.C. are also generally not required to reimburse employees for the cost of tools and supplies necessary to perform their job where an employee's remote work arrangement is entirely voluntary, meaning they are neither required nor encouraged to continue to work remotely.

### **What is a Necessary or Required Expense?**

Whether an expense will be deemed necessary for the performance of an employees' job depends primarily on the type of work the employee performs. Generally, reasonable reimbursable expenses will likely include:

- Employee internet usage;
- Employee mobile data usage;
- Laptop computers and tablets; and
- Equipment such as copiers, printers, and fax machines, if necessary.

The employee who prefers the convenience of a standing desk, a wireless computer mouse, or an ergonomic chair will likely foot the bill for these expenses, as such items are generally not deemed reasonable or necessary, absent an employer's legal requirement to provide them.

### **Practical Considerations for Employers**

As the pandemic continues, many employers are attempting to adapt to their workforce's new normal, which may include a continuation of their current remote model or the implementation of a hybrid work model. Employers that operate in several different jurisdictions are encouraged to familiarize themselves with the expense reimbursement requirements of all of those jurisdictions, if any.

Employers should also be aware of any potential reimbursement obligations under the FLSA or the obligations for employees working remotely as a reasonable accommodation under the ADA. Finally, employers operating in these above-referenced jurisdictions should coordinate with a Labor & Employment attorney to review your existing expense reimbursement policy or create and implement such a policy. The policy should clarify the

time period in which employees may submit reimbursement requests, identify an appropriate individual to whom employees submit reimbursement requests, and outline which expenses are eligible.