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### **Employers Have a Duty to Reimburse Employees for Work Related Cell Phone Use**

In the recent case Cochran v. Schwan's Home Service, Inc., a California Court of Appeal held that class certification was appropriate where an employee filed a putative class action on behalf of the company's service managers, alleging that they were not reimbursed for work related use of their personal cell phones. Colin Cochran worked for Schwan's, a food delivery service provider. As part of his job, he used his personal cell phone to make work related calls. Although he had a plan which provided unlimited minutes, Cochran claimed that the company had to reimburse him his work related cell phone use based upon California Labor Code Section 2802, which requires employers to indemnify their employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge their duties. When the company refused, Cochran filed a class action suit. The trial court denied class certification on the basis that the case was not suitable for class status because too many individual issues existed.

Cochran appealed, and the Court of Appeals reversed. The court stated, "We hold that when employees must use their personal cell phones for work-related calls, Labor Code Section 2802 requires the employer to reimburse them. Whether the employees have cell phone plans with unlimited minutes or limited minutes, the reimbursement owed is a reasonable percentage of their cell phone bills."

### **What This Means for Employers:**

Employers must reimburse employees for cell phone usage related to their job. If an employee has purchased a personal cell phone plan that provides the employee with "unlimited" minutes and the employee does not incur any additional expense for his/her work-related calls, the employer must still provide a reasonable reimbursement to the employee. Employers may want to consider issuing company cell phones and prohibiting the use of personal cell phones for work calls.

*The goal of this article is to provide employers with current labor and employment law information. The contents should neither be interpreted as, nor construed as legal advice or opinion. The reader should consult with Barsamian & Moody at (559) 248-2360 or toll-free at (888) 322-2573, for individual responses to questions or concerns regarding any given situation.*