



## The High Cost of Failing to Reimburse Employees for Required Work-Related Cellphone Usage

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ABM Industries, a janitorial service provider, recently agreed to a \$5.4 million dollar proposed settlement in *Marley Castro, et al. v. ABM Industries, Inc.*, a class action involving a California class of over 3,000 cleaning employees who claim that they were not reimbursed under Labor Code section 2802 for the expense of **required** use of their personal cellphones. The employees allege that they were required to use their cellphones to clock in and out from work and to communicate with their supervisors. The proposed settlement demonstrates how important it is for employers to review their cellphone reimbursement policies and practices. The class also asserted related claims under California's Unfair Business Practices Act and the Private Attorney General Act.

Although the ABM settlement still needs to be approved by the court (hearing set for February 12, 2019), the high dollar amount should motivate employers to revisit their cellphone reimbursement policies and practices and ensure compliance with California law. California law requires that employers reimburse employees for "some reasonable percentage" of their cellphone bills if the employer **requires** them to use their personal cellphones for a business purpose – regardless of whether the employee incurs charges over and above what his or her plan costs. See our prior advisory here.

Employers who have a policy or practice of requiring employees to use their personal cellphones for any business purpose may face similar litigation. Some of the more common cellphone requirements include:

- 1) Clocking in and out for work or meal periods;
- 2) Checking or updating schedules via a scheduling app or otherwise requiring them to use data;
- 3) Texting or calling a manager regarding scheduling or for other work-related purposes;
- 4) Using data plans for GPS purposes;
- 5) Requiring employees to use cellphones for purposes of responding to emergency calls or for on-call time periods; and
- 6) Any other required use of a personal cellphone (text, call, or data) for business-related purposes.

### What Are Best Practices for Employers?

*First*, employers should review their current reimbursement policies and practices and determine whether their employees are required to use their personal cellphones for business-related purposes and whether there are any alternatives to such usage.

To the extent that cellphone usage is optional, the employer need not reimburse employees for such use unless they incur additional expenses related to employment usage.

*Second*, if employees are **required** to use their personal cellphones for work, employers have several options. They must (1) reimburse employees for actual voice and/or data fees incurred for business purposes; (2) reimburse for a percentage of voice and/or data fees that accurately reflects the amount of mandatory business usage; or (3) provide employees with a cellphone or another communication alternative for business use. See our prior advisory on this subject here. If a set amount or percentage is reimbursed, the employer's reimbursement policy should permit employees to request reimbursement of any additional costs incurred, if the set amount or percentage paid is insufficient to cover the required business usage of their personal cellphones.

*Finally*, employers may provide alternatives to using personal cellphones for business purposes, thus making personal cellphone use **optional**. Such alternatives include access to the same data and/or functions on computers, tablets, or paper while on duty, providing alternative means of clocking in and out, and providing pagers for emergency calls. If personal cellphone use is optional, employers should ensure that their reimbursement policies and practices emphasize that an employee's use of his or her personal cellphone is optional. Written policies should make clear that listing a cellphone number as a point of contact is optional and that employees who incur additional cellphone costs for work use may submit such additional costs for reimbursement.

Employers should have reimbursement policies reviewed by counsel to ensure compliance with Labor Code section 2802.

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