

Labor Law: Remote Work and The Modern Worker

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In the age of technology, a new form of work has formed that took dominance in the midst of a global pandemic. Remote work had been around for a decade or so before the 2020 COVID-19 pandemic but began to take shape as a dominant form of work during the mandatory quarantines that were the new normal during the two-year pandemic. Remote work came with a large amount of support from the population. It also came with an equal number of questions and concerns from both employees and employers.

Questions like, how do we monitor employees? How do we know when work is over? Who will pay for my increased utility costs? What if I want to make my remote work arrangement permanent? These are all questions that employers and employees have had regarding remote work arrangements. There is no current case law regarding reimbursements for remote work expenses.

Remote work was not widely accepted by employers until during and following the COVID-19 pandemic. Most remote work arrangements before the pandemic were temporary or in the case of employee emergencies. Post-pandemic, remote work arrangements have become

more commonplace and are widely accepted by employers. Compared to just a few years ago remote work arrangements and new job postings for fully or partially remote jobs have increased dramatically.

Before exploring remote work arrangements, we need to explore reasons why people, and some companies, are partial to remote work arrangements. Remote work has grown in popularity among employees due to the flexibility it provides with regard to where one lives. Remote work arrangements are also great for those who do not wish to commute. It is understandable to see what attracts potential employees to any remote work arrangement. But why do employers offer remote work arrangements? Employers, like employees, enjoy a wide range of benefits from offering remote work as a full-time or part-time arrangement. These benefits include lower overhead, lower equipment costs, low employee turnover, and increases in productivity.

With remote work benefiting both employer and employee, it also brings a number of drawbacks that effect both employees and employers. Drawbacks for employees include a decrease in social awareness, isolation, decreased employee awareness, and potential for longer working hours. Drawbacks of remote work arrangements for the employer include cybersecurity concerns, employee supervision, lack of communication amongst employees and managers, and confidentiality issues.

Given the popularity of remote work arrangements from employers and employees alike, that question of reimbursement is tricky at best. Questions arise as a result of its popularity especially regarding reimbursement for expenses associated with employee's remote work arrangements.

Pressing questions by employees and employers alike is whether employers are required by law to pay for employee's remote work expenses, such as internet and electricity costs. What about remote workers who want to remotely work? Who is responsible for the extra expenses incurred by employees who are forced to remotely work? How will Unions play a factor in the question of remote work and employees rights? These are all questions that when answered, will help to define remote work arrangements going forward to allow for more transparency amongst employees and employers.

Remote work has been around for nearly two-decades with the rise of the personal home computer. Working remotely was always thought of as a perk, or "reward" due to its desirability amongst employees. Jobs that allowed you to work remotely were rare at best and most were not permanent arrangements up until 2019. The Covid-19 pandemic changed the remote work and the future of remote work arrangements. More and more job postings were for full-time remote work positions, current office jobs were moved to remote work arrangements, and most people were ultimately forced to work from home for a period of time.

The people who were forced to remotely work soon found themselves enjoying the flexibility that remote work had to offer. Soon after the pandemic started to end employees found themselves not wanting to return to the office. Most started to leave jobs that required a return to the office for jobs that offered full-time remote positions. Then of course you had the employees who wanted to return to the normal office setting who just spent the last two to three years remotely working. Either way, both employees were subject to costs that they otherwise would not have incurred by working in the office.

In response to costs associated with remote work, employees have sued employers to recover costs associated with remote work. One of the first cases filed regarding whether remote

work expenses are reimbursable is *Carson v. Universal City Studios Productions*.¹ This is an ongoing case that “asserts three causes of action, including failure to reimburse business expenses in violation of Section 2802 of the California Labor Code and violation of the state's unfair-competition law, Cal. Bus. & Prof. Code § 17200.”² This case was one of the first to be filed in the State of California and in the country. It is also no coincidence that the case was filed shortly after most Covid-19 work from home policies took affect at companies throughout the country.

Another lawsuit brought in California alleges that Amazon flouted California law, which requires businesses to reimburse employees for any work-related expenses.³ This suit is one of the first to bring up the issue of employee reimbursement for remote-work related expenses that employees incur. Amazon employees are suing for reimbursement for internet, electric, and other related expenses as a result of Amazon’s work from home order during the Covid-19 pandemic.⁴ Another similar case involves Fox News employees suing over not receiving reimbursement for remote work-related expenses.⁵ The complaints alleged by the Fox News employees are similar in nature to those alleged by the Amazon employees in their lawsuit.

In March of 2022, Better Mortgage was sued by former employee, Troy Seppala, for costs associated with being forced to work remotely.⁶ In the lawsuit “he claimed that after he was

¹ 36 No. 16 Westlaw Journal Employment 07

² Id.

³ Daniel Wiessner, AMAZON SUED OVER EMPLOYEES' REMOTE-WORK COSTS DURING COVID-19 PANDEMIC REUTERS (2022), <https://www.reuters.com/legal/government/amazon-sued-over-employees-remote-work-costs-during-covid-19-pandemic-2022-03-25/> (last visited Jun 19, 2022).

⁴ Id.

⁵ Maeve Allsup, FOX BROADCASTING FACES CLASS SUIT ON COVID REMOTE WORK EXPENSES BLOOMBERG LAW (2022), <https://news.bloomberglaw.com/daily-labor-report/fox-broadcasting-faces-class-suit-on-covid-remote-work-expenses> (last visited Jun 20, 2022).

⁶ Hugo Martin, SPOTLIGHT ON REMOTE WORK: EMPLOYEES ARE SUING BOSSES TO GET WORK-FROM-HOME COSTS REIMBURSED UNION (2022), https://www.union-bulletin.com/seattle_times/spotlight-on-remote-work-

ordered to work from home, starting in March 2020, he had to foot the bill for work expenses, including his internet use, extra electricity and use of his personal laptop and cellphone, at a total cost of "several thousands of dollars."⁷

Currently there are a number of similar other lawsuits that are targeting companies, big and small, for remote work-related expenses. Most lawsuits tend to be by people forced by their respective companies to work remotely. The reluctance to work from home is noticeably a driving factor in a few of these cases as workers feel like they should not be liable for the extra expenses that are occurred from working at home.

Tiffany Calderon, a former Wells Fargo Bank employee, sued the bank for failing to provide compensation for remote-work expenses which included, "internet, phone, personal computer, office equipment (printers, scanners, etc.) office supplies, utility bills, and/or fair value for space used as home office."⁸ The prior list of expenses are the majority of the items that come up in nearly all of the current lawsuit as they are the most common form of expenses incurred from remote work.

These new lawsuits raise a lot of questions with regard to remote work reimbursement policies. With only one being settled in California, the area is still relatively new. California and Illinois have the strictest reimbursement laws on the books and are two of only ten states to have such laws. Federally no laws requiring businesses to reimburse employees exist. The District of Columbia has reimbursement laws on the books that require businesses to reimburse employees

employees-are-suing-bosses-to-get-work-from-home-costs-reimbursed/article_46b9b6dc-2f20-55f1-a7ea-2c0072581d6b.html (last visited Jun 20, 2022).

⁷ Id.

⁸ Id.

for required remote working expenses, like computers.⁹ In the District of Columbia “If an employee’s remote work is entirely voluntary, then an employer would not generally be required to reimburse expenses for an employee to work remotely.”¹⁰

This starts the question of whether or not it should be required for companies to reimburse voluntary remote work from home employees. There is a difference according to The District of Columbia in those employees who are voluntarily working remotely and those who are forced to work remotely. Currently The District of Columbia is alone in having distinguished remote work to be non-voluntary as a requirement. This distinction between voluntary and non-voluntary remote workers is likely to create a unique dynamic and is likely to be distinguished in future court rulings. Another question to be asked is if remote work reimbursements will be its own law or whether it will fall under the Fair Labor Standards Act.

The Fair Labor Standards Act was signed into law on June 25, 1938, by then President Franklin Roosevelt during tough times for workers and was “intended to set a minimum wage floor, prevent child labor, and to provide for overtime premium pay to curtail excessive hours.”¹¹ “Congress enacted the FLSA to eliminate ‘labor standards detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers,’ and to prevent these substandard labor conditions from being used as an ‘unfair method of competition’ against reputable employers.”¹²

⁹ Kris Janisch & Jana Bjorklund, BUSINESS EXPENSE REIMBURSEMENTS FOR REMOTE WORKERS GOVDOCS (2021), <https://www.govdocs.com/business-expense-reimbursements-for-remote-workers/> (last visited Jun 19, 2022).

¹⁰ Id.

¹¹ Catherine Ruckelshaus, Fair labor standards act at 80: It's more important than ever National Employment Law Project (2018), <https://www.nelp.org/commentary/fair-labor-standards-act-at-80-its-more-important-than-ever/> (last visited Jul 26, 2022).

¹² 29 U.S.C. § 202(a).

Being a relatively new issue, remote work reimbursement is not widely protected in the current state of the law. Federal law, under the Fair Labor Standards Act (FLSA), states that “employers are not required to reimburse employees working remotely for business expenses they incur while working from home or elsewhere.”¹³ This gives employees no right under federal law to have their remote work-related expenses reimbursed. However, about twenty percent of states have laws on the books that protect workers and allow them to be reimbursed for some form of remote work-related expenses.¹⁴

California is one of those states. California, in *Richie v. Blue Shield of California*, ruled “that employees who are expected or mandated to work remotely are entitled to reimbursement of expenses related to the discharge of their job duties.”¹⁵ Nine other jurisdictions at the state and local level have enacted laws requiring employers to reimburse employees for certain business expenses. Those states include Illinois, Iowa, Massachusetts, Montana, New Hampshire, North Dakota, Seattle, South Dakota, and The District of Columbia.¹⁶

Similar in nature to California’s law, Illinois “requires employers to reimburse employees for necessary expenditures or losses incurred by the employee within the employee’s scope of employment and directly related to services performed for the employer” and the courts in Illinois have “interpreted this to require reimbursement for internet and cell phone expenses when they are used for work purposes.”¹⁷ Illinois also creates guidelines in the language of the law that “allows employers to set parameters on how much they will contribute toward such

¹³ Kris Janisch & Jana Bjorklund, BUSINESS EXPENSE REIMBURSEMENTS FOR REMOTE WORKERS GOVDOCS (2021), <https://www.govdocs.com/business-expense-reimbursements-for-remote-workers/> (last visited Jun 19, 2022).

¹⁴ *Id.*

¹⁵ *Richie v. Blue Shield of California*, No. C-13-2693 EMC, 2014 WL 6982943, at *1 (N.D. Cal. Dec. 9, 2014)

¹⁶ *Id.*

¹⁷ *Id.*

expenses (so long as it is not “de minimus”).”¹⁸ The majority of the states listed above also allow for similar parameters to be set on contributions.

Almost all of the ten states that currently have remote work reimbursement statutes on the books read something similar to the California and Illinois statutes. Most cover necessary work expenses, which normally include internet, phone (in some cases), electric, and the cost of office supplies.

With the current state of the law the question of whether your remote work expenses will be reimbursed is entirely dependent on which state you live in. There are no unions who provide for remote work reimbursement in any of their collective bargaining agreements. There is also no federal protection for workers under the Fair Labor Standards Act.

Under 29 C.F.R. § 778.217(a), “where an employee incurs expenses on his employer's behalf or where he is required to expend sums by reason of action taken for the convenience of his employer, section 7(e)(2) is applicable to reimbursement for such expenses.”¹⁹ This is the current state of the federal law. It makes no mention of remote work expenses directly.

This leads to questions around the issue to remain open. This includes will we see these policies included in the Fair Labor Standards Act? Will all states eventually adopt similar language to that of the ten who currently do provide some protection? If so, will it be closer in line with Illinois or South Dakota?

¹⁸ Seyfarth Shaw LLP, Expense reimbursements in the era of remote working Wage & Hour Litigation Blog (2021), <https://www.wagehourlitigation.com/uncategorized/expense-reimbursements-in-the-era-of-remote-working/> (last visited Jul 11, 2022).

¹⁹ 29 C.F.R. § 778.217

Given the current state of the law, and the history that lead to the current state of the law, it is likely that remote work reimbursements will fall under the Fair Labor Standards Act. To achieve the stated goals of the act, “Congress adopted strikingly broad terms designed to go beyond traditional common-law agency principles to reach all those accountable for upholding the minimum labor standards required by the Act.”²⁰ These broad terms set the definition of employee and employee as broad as possible to help ensure that business owners were applying fair labor standards.

The Fair Labor Standards Act was passed in a time when there were hardly any labor laws in the United States. Its creation set labor law as we know it today in motion with the first real standards that employers were to follow with regard to their employees. It was intended to eliminate “labor standards detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers.”²¹ If remote work reimbursements are to fall under the umbrella of the Fair Labor Standards Act, then they must be standard and necessary for either the health, efficiency, or general well-being of the worker.

The thought was that remote work would go away after the COVID-19 pandemic and that people would return to the office. However, statistics like the previous one show this to be untrue. Many people are staying remote as workers realize the freedom it provides, and employers realize the drastic change in overhead costs. The general idea is that remote work is truly one sided in favor of the worker. That is not the case being that companies generally save money with remote work arrangements.

²⁰ 29 U.S.C. § 202(a).

²¹ *Id.*

Ten-years ago the answer to the preceding question would have been no.

However, the world today is more advanced and allows the option where most work can be done from the click of a laptop in the comfort of our individual homes and not from a traditional office. More and more people are taking up remote work opportunities as more companies are offering them. Current projections estimate that “25% of all professional jobs in North America will be remote by the end of 2022, and remote opportunities will continue to increase through 2023.”

One study done by Sun Microsystems showed that since implementing a telecommuting policy in 2007 they have eliminated 7,700 seats in physical offices.²² This has saved “the company more than \$255 million over four years and continues to save the company \$68 million annually.”²³ Studies like this show a benefit to employers and employees alike. The Fair Labor Standards Act was adopted to help ensure general well-being of the worker. The definition of employee was adopted in the act to be broad to encompass every form of worker. This definition is surely to include those workers who work remotely.

If the Fair Labor Standards Act covers remote workers as employees, then it should allow for the workers to recover remote work reimbursement costs that are associated with them performing the necessary function of their job. Most of the current court cases that involve remote work reimbursement issues, ask that employers pay for their employee’s remote work expenses, such as internet, electric, phone bill, and etc. These requests are for basic expenses incurred by a remote employee while working for their employer at their own home. It is

²² Mary Kelly, How telecommuting increases business profits Productive Leaders - Mary Kelly (2019), [https://productiveleaders.com/telecommuting-business-profits/#:~:text=Companies%20that%20don't%20have,save%20between%20%242%2C000%20and%20%247%2C000](https://productiveleaders.com/telecommuting-business-profits/#:~:text=Companies%20that%20don't%20have,save%20between%20%242%2C000%20and%20%247%2C000.). (last visited Aug 2, 2022).

²³ Id.

necessary that these expenses rise when an employee is spending most of their day at home working and earning money for their respective company.

The Fair Labor Standards Act provides that, “Where an employee incurs expenses on his employer's behalf or where he is required to expend sums by reason of action taken for the convenience of his employer, section 7(e)(2) is applicable to reimbursement for such expenses.”²⁴ It also states that these payments for reimbursement are not to be “included in the employee’s regular rate.”²⁵ The FLSA (Fair Labor Standards Act) already requires employers to reimburse employees for business expenses incurred during the course of their job.

When employees are required to or voluntarily work from home there are certain things that are required to properly perform the functions of their jobs. Those things include a well secured and established internet connection, phone service, and electricity. There are also other requirements that vary depending on the job and requirements of that job. These are all things that were normally provided to them when they went to their respective offices. They were necessary for employees to perform their jobs at the office and are surely still necessary for them to perform their jobs while being at home. In most cases the job description also does not change when one works from home versus being in the office. There are still mandatory meetings, due dates, and any other respective job requirements. The only change is the location that the employee is using to perform those job functions. Now when an employee works from home, the employee is providing these necessities to themselves incurring more costs than they had to incur while working in a physical office. The employee’s costs to perform their necessary job functions have now gone up while the company’s overhead has gone down.

²⁴ 29 CFR § 778.217

²⁵ *Id.*

The FLSA was enacted to eliminate “labor standards detrimental to the maintenance of the minimum standard of living.”²⁶ Companies that require employees to work from home, and or allow for employees to work from home, are reaping the benefits by having a lower overhead bill, while employees are left to suffer with increased costs of living from being at home more where they use more electricity, water, and etc. So why should employers reap the benefits of remote work arrangements, whilst employees are left with a lower standard of living while doing the same amount of work?

Arguments against remote work reimbursement tend to point to how would we be able to gauge when an expense is actually occurred? How would you be able to decide when a phone call was personal or for business? Also how do you distinguish expenses that are incurred for people with, for example, home internet plans. What part of that plan is personal and what part is for work? These are questions that are often cited by companies and opponents of remote work reimbursement. There are after all valid arguments. Typically, expenses actually incurred must be reimbursed. However, the answer to the questions above is likely dependent on what state you are located in currently as there is no federal guidance on the issue of remote work reimbursement as of now.

In Ca Labor § 2802, subdivision (a), “[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer”²⁷ According to the legislative history of the statute cited in *Gattuso v. Harte–Hanks Shoppers, Inc.*, the purpose of the statute is “ ‘to prevent employers from passing their operating expenses on to

²⁶ 29 U.S.C. § 202(a).

²⁷ *Cochran v. Schwan's Home Serv., Inc.*, 228 Cal. App. 4th 1137, 1143–44, 176 Cal. Rptr. 3d 407, 412 (2014)

their employees.’ ”²⁸ In *Cochran v. Schwan's Home Serv., Inc.*, the courts went as far as to answer the question of how to determine what is work and what is personal when they ruled that “to be in compliance with section 2802, the employer must pay some reasonable percentage of the employee's cell phone bill.”²⁹ California is the only state to enact the percentage rule as of now.

Another example of a state’s law regarding reimbursement is Illinois. Illinois “requires employers to reimburse employees for necessary expenditures or losses incurred by the employee within the employee’s scope of employment and directly related to services performed for the employer.”³⁰ The courts in Illinois have interpreted this to cover reimbursement for things like cell phones and internet when used for work purposes but “includes a time restriction and requires employees to submit expense reimbursement requests within 30 calendar days of incurring the expense.”³¹

Another issue that companies may face when figuring out how to reimburse employees is compliance. How do they make sure employees are being fair? How do companies monitor what employees are spending and what their usage is for utilities? That answer depends on how the company wants to approach it. Currently there are zero states with guidance on how a company can manage compliance with the reimbursement statutes. This could create problems and be detrimental to the worker if left to the companies and some guidance should be established with any new amendment to the FLSA.

²⁸ *Gattuso v. Harte–Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554, 562, 67 Cal.Rptr.3d 468, 169 P.3d 889

²⁹ *Cochran v. Schwan's Home Serv., Inc.*, 228 Cal. App. 4th 1137, 1143–44, 176 Cal. Rptr. 3d 407, 412 (2014)

³⁰ Jana Bjorklund & Kris Janisch, Business expense reimbursements for remote workers GovDocs (2021), <https://www.govdocs.com/business-expense-reimbursements-for-remote-workers/> (last visited Aug 3, 2022).

³¹ *Id.*

There are a number of other states that have remote work reimbursement restrictions. However, every state that has remote work reimbursement statutes on their books differ from one another in one or more respects. These different statutes make it difficult on corporations to determine how to reimburse employees because for each office location they must employ different procedures for doing such which can create confusion. It can also create confusion amongst employees when they are not made aware of these statutes and how they operate.

One way to help manage compliance is an honor system where employees report their usages and expenses in a spreadsheet monthly or quarterly to their employers. This system would be built around the good word of the employee and could work for some companies. The main issue is trust by the employer that the employee is not misusing funds or lying on those sheets. The issue of trust makes this approach the least likely to be adopted by many companies.

The second approach is for employers to provide stipends to employees for what an average employee would use for reasonable expenses. This would cover internet, phone, and electricity as well as other material items that are required for remote work. This approach could be amended with a usage requirement like in California.

The third approach is for employers to only reimburse employees once the employee submits receipts and other forms of proof that the funds were spent correctly. This approach is adopted almost universally amongst companies today for reimbursements not related to remote work and would simply just be amended at each company to cover remote work costs. The transparency of this approach makes it the best approach.

The Fair Labor Standards Act was passed to help eliminate “labor standards detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and

general well-being of workers.”³² The act has been around since 1938. This act was passed before the start of World War II. Surely, when the act was passed it was not meant to be stagnant and not account for the advances of the modern worker.

In recent years, the very definition of work and employee has evolved to include a new type of worker. One who does not have to be present in a physical office but can work from the comfort of his or her home. Those workers should be included in the broad definition of employee that congress intended to cover all employees when they passed the FLSA. The legislative history of the FLSA shows that Congress intended to protect the minimum standard of living for workers.

Not reimbursing workers for their remote work expenses is a direct violation of that intent because it lowers the minimum standard of living for workers by increasing their daily and monthly expenses without adjusting their compensation. This decreases their take home pay overall. By implementing remote work reimbursement standards in the Fair Labor Standards Act, the Federal government would be protecting workers interests and providing for the general well-being of the American worker.

³² 29 U.S.C. § 202(a)