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Meet Nancy Gray

In a diverse legal career that has spanned over three decades, attorney Nancy Gray has represented hundreds of clients in a variety of civil matters, including labor and employment (management/employee); sexual harassment, discrimination, wrongful termination; commercial, contract and business issues.



Among other highlights, Ms. Gray served as Assistant District Attorney in New York, spent seven years with a national law firm working on complex

Employee Cell Phone Reimbursement in California - What Every Business Needs to Know Now



A recent ruling from a state appeals court means big changes for California businesses when it comes to reimbursing employees for use of their personal cell phones.

The Court of Appeal of the State of California Second Appellate District-Div. 2 reversed the trial court's refusal to certify a class of service managers this past August in [Cochran v. Schwan's Home Service, Inc.](#) The Court found that California Labor

pharmaceutical and medical device cases, and successfully litigated and coordinated cases around the country. She has a unique expertise in matters pertaining to the adulteration of extra virgin olive oil.

Ms. Gray has also lectured and written on a variety of topics, including expert testimony, drug and medical device regulation, sexual harassment, employment practices and child performer issues.

In 1997, she started her own firm, based in Los Angeles.

Having been raised in New York City, Nancy enjoys dramatic, musical and comedy theater as well as pro sports. She is a PADI-certified scuba diver. Among her favorite reading material is *Bon Appetit* and anything pertaining to criminal behavior and behavioral profiling.

Code Section 2802, which generally requires employers to reimburse employees for job-related expenditures, applied to the group of Schawn's service managers and delivery drivers regardless of their calling plans or who in the family was paying the phone bill.

In addition to arguing the merits of certifying a class, Schwan's argued that California Labor Code Section 2802 did not apply because many of the employees were on unlimited data family calling plans, and that work-related calls did not incur additional expenses for those employees, many of whom had their bills paid by other family members. The appellate court disagreed, ruling that an employee was incurring expenses by making or receiving work-related calls, regardless of the specifics of their personal calling plans. "It is no concern to the employer that the employee may pass on the expense to a family member or friend, or to a carrier that has to then write off a loss. It is irrelevant whether the employee changed plans to accommodate work-related cellphone usage." The court continued that, "to show liability under Section 2802, an employee need only show that he or she was required to use a personal cell phone to make work-related calls, and he or she was not reimbursed."

The *Cochran* opinion clarifies the application of California Labor Code Section 2802 for cell phone reimbursements as "actually and necessarily incurred." This follows the California Supreme Court's 2007 opinion on mileage reimbursements in *Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal. 4th 554, which set the standard for employers covering expenses "actually and necessarily incurred" by

employees during the course of their job duties. However, without any specific guidance from the court, Cochran creates as many questions for employers as it resolves.

Reimbursing Employee Cell Phone Expenses - Post Cochran Best Practices



There is no doubt that business has gotten increasingly mobile in the last decade. Working hours are no longer 9 to 5, and if your California business wants to compete in the global marketplace, it means connecting your employees to customers and coworkers outside of normal business hours. Email, text, data, and

telephone are available in all of our pockets, but without clear statutory guidance, and in light of the new case law, the cell phone reimbursement landscape has suddenly become more complicated for employers.

The *Cochran* court was vague about reimbursement rates, beyond requiring employers to pay a "reasonable percentage of the employee's cell phone bill" regardless of his or her calling plan or unlimited data or calling minutes.

What does that really mean in practical terms? Here are a few suggestions for employers:

Develop Human Resources Policies for Cell Phone Reimbursement Rates

In recent years, with the ubiquity of free mobile devices and unlimited voice and data plans as part of many cellular contracts, many employers have allowed employees to provide their own devices for work-related uses. In the wake of Cochran, it might be time to re-think this model. If your company plans to continue (or begin) reimbursing employees for use of personal cell phones, you should establish clear, fair policies and let employees know how reimbursements will be calculated. These policies should include categories of employee jobs, based upon the percentage of time an employee is away from the office, or spends taking business-related calls outside of the office. Sales reps, drivers, and others who

spend a large percentage of their work time outside of the office should be fully covered, while a more in-office, desk-based position might require no reimbursement whatsoever. Reimbursements should be set fairly across job descriptions by the human resources department, with formal policies and procedures for granting higher reimbursements.

Begin Reimbursements Immediately

If your company does not currently reimburse employees for work-related use of personal mobile devices, it should review its policies and begin doing so immediately to avoid litigation.

Consider Issuing Phones

Providing specific 'for work only' devices for calls and emails is one way for companies to handle the ambiguities in the cell phone reimbursement rules. Not only might this be a less expensive option for employers, it allows your company control over the device, requires the employee to return it upon termination of employment, and can be a much safer and secure way to protect your company's data. If you plan to issue phones, have clear, fair policies about which job categories will be issued phones, such as all non-exempt employees, or remote field staff. Your company should also develop and communicate policies about the use of those devices to ensure they are used for business-related purposes only.

About Gray & Associates P.C.

Attorney Nancy Gray of Gray & Associates, P.C. has more than 30 years of experience providing personalized attention and creative solutions to her clients' legal issues. Whether you need a strong litigator, a labor and employment advocate, or a savvy business law attorney, you can rely on Gray & Associates to provide you with excellent legal representation. Click [here](#) to read more.

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