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Labor & Employment Alert

JULY 24, 2023

California Court rules on COVID reimbursement for remote work during Pandemic

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In *Thai v. IBM*, the court held that mandatory “stay-at-home” order did not cut off IBM’s obligation to reimburse for ordinary work materials it provided in offices pre-pandemic.



What’s the Impact

- / The ruling is not as broad as may appear on its face—it did not set forth a rule that all COVID expenses are reimbursable, the “standard of review” of the Court of Appeal.
- / Employers who implemented remote work policies due to Newsom’s “stay-at-home” order now have a better understanding of how the government’s mandate fits into the defence of a COVID-reimbursement claim.
- / Employers should consider preserving information and/or evidence about COVID-related work expenses that employees may have incurred during the pandemic.

Introduction

With COVID barely in the rearview mirror, lawsuits regarding expense reimbursements incurred by employees during the pandemic are starting to reach the California Courts of Appeal, and thus a body of caselaw is finally starting to form. A recent decision by the California Court of Appeal, *Thai v. International Business Machines Corporation*, sheds light on an important threshold issue of "COVID-Reimbursement Law": whether Gavin Newsom's Executive "stay-at-home" Order is a "superseding cause" that cuts off reimbursement liability, or in English:

Does the fact that employees incurred expenses while working from home was the direct cause of the "stay-at-home," cut off an employer's liability for legally reimbursable expenses?

Thai v. IBM is an appeal of a "demurrer" and that's important

Courts analyze cases in several stages, including (but not limited to) (1) the pleadings stage, (2) the summary judgment stage, and (3) trial stage. Each stage has its own "burdens of proof" (i.e., how much evidence) that each party must meet to either move the case forward (i.e., get to a trial), or end it before a trial.

The first stage of the process, sometimes called the "pleadings stage" involves a complaint filed by a plaintiff, and some sort of "responsive pleading" to that complaint. A responsive pleading can be an answer (i.e., we deny everything and here are other reasons why you lose), a motion to compel (i.e., this case should be in arbitration), or a "demurrer" (i.e., even if everything you say is true, you can't win because [case, regulation, other]). *Thai* is a case of the lattermost variety.

Plaintiff Thai filed a complaint alleging that IBM had failed to reimburse him for business expenses that (a) he actually incurred, and (b) for things that IBM had previously provided him while in the office (i.e., access to internet).

IBM argued that Thai's complaint should be completely thrown out (i.e., filed a demurrer) on the basis that it could not be held liable for the expenses Thai incurred—because of the "stay at home order." In law, this is sometimes called a "superseding cause."

What is a demurrer?

As explained above, a demurrer is a legal motion used by one party in a lawsuit to argue that even if all the facts presented by the other side are true, they still cannot win the case based on the law (the "Demurrer Standard"). Understanding the "demurrer standard" is important because if a party fails to prevail on a demurrer, it doesn't mean they have lost the entire case based on the facts and arguments presented.

The story of Derrick Driver, the 18-Wheeler, & the T-Rex

Derrick Driver gets distracted while driving a sedan and hits a parked 18-wheeler. Due to the force of the collision, the 18-wheeler starts rolling toward a cliff. If the 18-wheeler continues rolling, falls off, and is destroyed, Derrick Driver was the "but for" cause of the accident and must pay damages. However, let's imagine that before the 18-wheeler falls off the cliff—it is destroyed by a meteor, flash flood, lightning bolt, or T-Rex. Such an unexpected event occurring after

Derrick hit the 18-wheeler may “cut-off” his liability for the destruction of the 18-wheeler. That is called a “superseding” cause.

IBMs argued that the “stay-at-home” order was like a superseding cause, meaning it eliminated IBM's obligation to reimburse Thai for his expenses. In simpler terms, IBM was claiming that even if Thai was right about being entitled to reimbursement, the “stay-at-home” order canceled that obligation.

What’s the Impact?

In this situation, it’s more helpful to begin with what *Thai* does not mean for employers.

Thai does not mean that the “stay-at-home” order is irrelevant to COVID expense reimbursement claims. Instead, what the *Thai* court said is that the “stay-at-home” order is not an *automatic* “get-out-of-reimbursement-free” card for IBM. The “stay-at-home” order remains relevant to the question of “merits liability,” i.e., whether IBM had the legal obligation to reimburse Mr. Thai for the expenses at all. (See Footnote 11 [“[A]lthough we need not address the issue in the present appeal, it may be that the ‘direct consequence’ language is relevant in determining whether and to what extent expenses that an employee was already incurring for personal reasons are reimbursable under section 2802.”].)

The upshot is that employers can still argue that certain pandemic-driven remote-work expenses do not need to be reimbursed, and the “stay-at-home” will be relevant to that question of “whether to reimburse at all.” How much weight courts should, or must, give the fact that the “stay-at-home” was not an employer’s choice or option appears to remain an open question.

Take Aways

The lesson employers should take away from *Thai* is this: if you are facing a COVID expense reimbursement claim, do not rely *solely* on the “stay-at-home” order for your defense. Rather, employers may want to consider investigating (1) what expenses its employees actually incurred for remote work in the pandemic, and (2) which of those expenses were “reasonable and necessary” for the execution of their job duties under existing law—versus expenses that are personal and/or do not directly benefit the employer. (Note: The *Thai* court expressly reserved the question of “whether it is appropriate to separately consider whether actual expenses incurred in performance of work duties were for the employer’s ‘benefit’” for another day, if ever.)

Get Compliant

As is often the case in California “wage-and-hour” law, the best defense is to fully comply.

Simple? Yes. Easy? No.

Nixon Peabody’s lawyers have extensive experience in the preparation, review, and analysis of reimbursement policies, as well as in defending against COVID-reimbursement claims in arbitration and court. Our dedicated team of [California labor and employment attorneys](#) are

ready, willing, and able to guide you through the web of complexities, of which reimbursement obligations is only one small strand. If you have questions about the *Thai* decision, COVID reimbursements, etc., please do not hesitate to reach out to the authors of this article.

Conclusion

The *Thai v. IBM* decision provides much-needed guidance for employers grappling with reimbursement obligations during remote work. While the court's ruling centers on the pleading stage and the impact of government stay-at-home orders, it emphasizes that employers must fulfill their reimbursement responsibilities under Section 2802.

Employers should consult legal counsel to ensure compliance with reimbursement obligations and navigate the complexities of remote work scenarios. As this area of law continues to evolve, staying informed and proactive will be crucial for employers in California.

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