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Even for unlimited plans, Uber must pay, Daily Journal, by Marc Voses & Chang Liu

The Daily Journal recently published an article written by **Marc S. Voses and Chang Liu on Uber and the Cochran decision.**

The U.S. District Court for the Northern District of California which recently applied the California Court of Appeals' ruling that, under California Labor Code Section 2802, employers are obligated to reimburse their employees for work-related personal phone expenses, even if the employees have unlimited plans.

In *Douglas O'Connor v. Uber Technologies Inc., 13-03826 (N.D. Cal. Dec. 9, 2015), class plaintiffs were Uber drivers in California who seek, among other relief, reimbursement of their cellphone expenses incurred while driving Uber cars. The court certified the class over Uber's objections.*

Uber contended that it need not reimburse any expenses that were not actually incurred, arguing that when drivers have unlimited cellphone plans, they do not incur any actual expenses. The court, however, rejected this argument. Quoting the decision in Cochran v. Schwan's Home Serv. Inc., 228 Cal. App. 4th 1137 (Cal. Ct. App. 2014), the court reasoned that even if the employee did not incur any extra expenses, the employer is required to reimburse a reasonable percentage of the employee's phone bills. (For a detailed discussion of the Cochran case, see Marc Voses, "Work-Related BYOD Use: Potentially More Costly Than Previously Thought," Career Management (Sep. 29, 2014)).

The court pointed out that Uber erred in its interpretation of the Cochran decision, finding that the decision does not hold that employers have to reimburse the employee even if no expenses were incurred. To the contrary, the court recognized that employees were paying for work expenses as long as they were using the phone for work purposes, regardless of whether they have unlimited plans. In other words, unlimited cellphone plans are not free, so employers still have to reimburse the employees for the expense of having the plan, but only for that portion of the plan used for work.

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