The Hidden Cost of Remote Work: Who Pays for the Home Office?

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By Peter Spanos

Remote work is now a customary feature of many workplaces. Until recently, employer policies (if any) governed payment of the job-related expenses incurred by remote workers. However, a number of states have now enacted express mandates for payment of remote employment expenses.

California, Illinois, Iowa, Massachusetts, Minnesota, Montana, New Hampshire, New York, North Dakota, Pennsylvania, South Dakota, and the District of Columbia have statutes that require employers to reimburse employees for certain remote work expenses. The city of Seattle also requires payment of "remote work expenses" under its wage payment statute.

There are three different types of expense reimbursement laws:

Required Reimbursement
Most of these states require reimbursement of "necessary" expenses that relate to the performance of the employee's duties. Those states are California, Illinois, Massachusetts, Montana, North Dakota, South Dakota and the District of Columbia.

Conditional Reimbursement
Two states make reimbursement conditional on the employer's policy.

- Iowa requires reimbursement of expenses "authorized by the employer;" and
- New York only requires payment for expenses that are "promised" to the employee.

Equipment/Tools Reimbursement
Two states do not have the "necessary" condition for reimbursement but require payment for equipment or tools based on their use in connection with employment.

- Minnesota requires reimbursement of expenses for "equipment used" in for work, except "tools of the trade."
- New Hampshire similarly requires payment for any expenses "incurred at the request of the employer" except for "expenses normally borne by the employee."

All of these state laws commonly require more extensive reimbursement for work expenses compared with the narrower typical expense reimbursement practices historically used by employers. However, detailed guidance on the scope and nature of required reimbursements is not yet provided in these state laws.

State laws that require employers to reimburse the expenses of remote workers typically define the costs covered in terms of whether they are “necessary” for discharge of the employee’s duties and directly related to the kind of work performed. Although not expressly stated in these laws, the underlying premise is that the expenses would not have been incurred unless the employee was performing remote work for the employer.

Clearly, the definition of reimbursable expenses is very broad, since any equipment, software, connectivity, or furniture that is actually and routinely used to perform work can be seen as “necessary.”

Typical examples of reimbursable expenses would include computer equipment, printers, cellphones, internet connections, software licenses, and cameras/microphones for video conferencing. However, the definition of expenses that are required to be reimbursed is broader than the typical scope of equipment that is reimbursed or furnished to the employee. For example, if a desk or an ergonomic chair is necessary for performance of the employee’s duties, then it may well fit the definition of a reimbursable expense under state law.

As a general rule, any expenses that would be incurred by the employee if the employee were not working for the employer are not covered by the state reimbursement laws. Certainly, any normal living expenses (such as food, furniture, electric power, etc.) are not reimbursable under these laws. Also, any personal luxury items that are not necessary for the work (such as decorations for a home office) are not covered.

The state statutes do not distinguish between temporary and more long-term remote work for purposes of reimbursement.

None of the state laws address how the allocation of expenses that are used both for work and personal activities should be handled. Under the laws of the seven states that use the “necessary expense” test, it would probably violate the law to require pro rata apportionment, since the expenses are fully reimbursable if “necessary” for work. In the two states where the test is whether the equipment or tools are “used” in connection with employment, a similar analysis could apply. In the two states where the employer reimburses pursuant to its authorization or promises, the employer may allow for partial reimbursement as part of its policy. However, establishing and enforcing the separation of employment-related costs and personal costs would be very difficult.

The state of Illinois is an exception to the lack of guidance on reimbursable expenses under state laws. The Illinois law supplies a five-part test for determining what expenses are covered:

- Whether the employee has any expectation of reimbursement
- Whether the expense is required or necessary to perform the employee’s job duties
- Whether the employer is receiving a value that it would otherwise need to pay for
- How long does the employer receive the benefit
- Whether the expense is required for the job

In more than 75% of the states, reimbursement of remote work expenses is neither required by law nor regulated. As a best practice, however, employers should establish clear, detailed policies that describe what remote work expenses are considered to be necessary and directly related to employee duties, as well as policies for documentation and reimbursement of expenses. These policies may need to vary depending upon the job description, work performed, or disability accommodation.