



CORONAVIRUS UPDATE

MPEG: WORKING FROM HOME EXPENSES & BOX RENTALS (UPDATE 9-3-2020)

Dear Members,

Due to the on-going pandemic, many members – some for the first time – are being required by employers to work remotely. These requirements present much different circumstances than when an employer and member reach a mutual agreement that services will be performed from home as an accommodation to the employee. Obviously, we do not want to allow this enforced telecommuting to transform into an opportunity for employers to take advantage of any members. That cannot be tolerated.

EDITING/SOUND EQUIPMENT

Under the Majors & Independent Agreements, employers must provide you with the equipment necessary for you to perform your job duties – even if employers require you to work from home, such as is occurring as a result of the Covid-19 restrictions. Other agreements are silent in this regard, but we will absolutely take the same position.

Let's assume most members don't have their own equipment and are not being allowed to come to the employer's premises during the pandemic. Under these circumstances, the employer must provide you with the equipment necessary to perform your job duties – either by providing access to equipment owned/rented by the employer or through reimbursement of your reasonable expenses in securing the necessary equipment. (If you take it upon yourself to add extra equipment that is desirable, but not necessary, you probably should not expect the employer to provide reimbursement for the additional equipment.)

Employers must not be allowed – in any fashion – to require member-owned systems or equipment as a condition of employment. We must be diligent about this and not allow any employers to use this current situation to erode conditions. If you are denied employment because you do not own certain equipment or an employer is attempting to force you to acquire equipment in order to employ you, please reach out to the Guild immediately, as this will not be tolerated. Your timely reporting of any such incidents will aid us in preventing such trends.

If – and only if – you already own the equipment necessary to perform your job duties, or you want to purchase the equipment because you intend to use it on future assignments, you certainly have the ability to negotiate that an employer rent the use of your equipment while you are employed for that assignment. If they are agreeable to doing so, under the Majors and Independent Agreements (and again, we would enforce the same requirement under the other agreements), they are required to provide you with a rental fee for that equipment, commonly known as a box, rig or kit rental. When this occurs, the terms and conditions of this rental are freely negotiable between the employer and the employee. However, if you are in a position to have to negotiate a box/rig/kit rental fee and you are in need of advice, please contact a Field Representative. We have compiled information that enables them to offer you some guidance.

OTHER ASSOCIATED BUSINESS EXPENSES

In addition, apart from collective bargaining agreement obligations, certain state/local laws may come into play in connection with employer-imposed remote work assignments. For instance, Section 2802 of the California Labor Code requires an employer to reimburse an employee for necessary and reasonable expenses. So, even if the employer is providing editing/sound equipment to you, there may be other expenses that would fall under the Section 2802 reimbursement obligation. (Although there is not an identical law in New York, the general legal principles are the same.) While there are not uniform, clear-cut, delineated answers as to what will constitute "reasonable and necessary expenses" for all situations, there are some generally-accepted guidelines (discussed in detail below). The overarching idea is that an employer should not be able to shift to an employee any business-related expense that the employer would have otherwise incurred – and the employee would not have incurred – in order to perform the requested work. Those might include increased internet bandwidth needs, additional electricity usage, "rental" of space of your home, increased use of printer ink, paper and other office supplies, etc.

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This “reimbursement” can take a couple of different formats, but ultimately it is generally permissible for the employers to determine the process by which they are going to meet their reimbursement obligations. For instance, an employer may provide that a set (or negotiated) “stipend” or “allowance” be paid for certain business expenses, or that employees submit written expense reports, with supporting documentation, to obtain reimbursement. Many employers are choosing to provide the stipends/allowances rather than go through a reimbursement process. The stipends we have seen so far vary quite a bit.

If you have a box/kit/rig rental fee, you can negotiate these other incidental business expenses as part of that fee. But if those expenses are not built into the fee, the employer is still obligated to provide reimbursement for them as long as it is clear that the box/kit/rig rental fee is being paid solely for the equipment already in your possession.

Although Section 2802 does not require an employer to outline its policies with respect to such reimbursement, most employers believe it is a prudent business practice to do so. In the course of discussing equipment needs with an employer – either during or after starting employment – please inquire if the employer has a policy regarding employee expense reimbursement, even if the employer has not (yet) developed a policy specific to this new “required” telecommuting paradigm. (We are also requesting them from some of the employers, but I would like to have as many on hand as possible.)

If your employer is providing you with either a box/kit/rig rental fee or additional stipend/allowance that you do not feel adequately covers your reasonable and necessary expenses associated with performing your services from a remote location, please reach out to a union Field Rep. In most instances, the first step would be to submit a written request for expense reimbursement to the employer, with supporting documentation; if that request is not approved, we can advise you of your rights to file a claim with the California Labor Commissioner or other state/local authorities. You should plan to demonstrate that you had an out-of-pocket expense related to the services that would not have ordinarily been incurred (i.e., a “loss”) and therefore are seeking more than what the employer is offering. As with any grievance or other employment-based claim, you can substantiate your position through documents and/or testimony.

Under the union agreements, if you have a loan-out company, you are still considered to be an employee and therefore, are entitled to expect that an employer will furnish equipment or negotiate a box/kit/rig rental fee if you are using your own, rather than employer-provided, equipment. Your tax advisor(s) may have additional input as to the benefits/risks of seeking reimbursement of expenses under Section 2802 or other state/local laws.

Internet service

If you have to increase your internet bandwidth as a result of working from home, it is reasonable to expect the employer to pay for that increased amount of money per month. In addition, it is reasonable to assert that some internet use can be delineated as an employee expense appropriate for reimbursement. In order to determine what that requested amount might look like, think about the following example: Assume within a 24-hour basis, you sleep for 8 of those hours, and that you don't work at all during the weekends (don't we all wish!), and are therefore awake and able to use the internet for the other 16 hours on five of seven days. If you work for 12 of those hours (or 10 hours, etc.), then do a calculation to figure out what percent of your monthly cost is attributable to the use for work.

Utilities (including A/C)

This is a little more challenging and the best advice we can offer is to compare your utility bill to the previous year for the same month and if it is higher now, include that difference in your business expenses. Obviously, this rough calculation of the differential may need to be adjusted by many other factors, including whether you were working remotely or not a year ago, or other people in your home who are working remotely now, but otherwise wouldn't have been, etc.

Use of your home space

You are certainly free to attempt to include this sort of cost in your requested reimbursement discussions, but it is likely to be accepted in circumstances where you have a loss of income due to working from home when you otherwise would have rented the space out to a third party. (Unless it is part of the agreed-upon box rental).

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Paper/printer cartridges (or other office supplies)

If, for instance, printing out a substantial amount of documents (script notes, director logs) is necessary to perform your job, it is reasonable to expect these additional ink/paper costs to be reimbursed or have this expense included in your overall stipend/allowance to cover the cost of these items. Small incidental uses of office supplies that a person typically would have at home, e.g., pens, staplers, paperclips, notepads, highlighters, might not be viewed as a big “loss” worth going through the expense reimbursement process, but you could always request that an employer provide a small office supply “kit” as part of the provided equipment. After all, those things are typically supplied by the employer when on employer premises.

Soundproofing

If working from home requires you to add soundproofing/insulation, it is reasonable to request the employer to reimburse for this improvement – or at least some portion of it, if it is meant to be permanent and not solely for the use of the one job.

If you have already performed services under an employer-imposed remote worksite and have not received any stipend/allowance or other reimbursement that would fully cover your additional business-related costs, you can reach out to that employer and seek retroactive reimbursement.

These are challenging times we are in, due to circumstances not within our control but it cannot be made even more challenging by things we can control – not allowing any employers to take advantage of this forced work at home situation. As Labor Day approaches, let us celebrate the efforts of our labor and let us stand up for that which we are rightfully entitled.

If you have further questions regarding negotiating box/kit/rig rentals, or other business reimbursements, please contact your union Field Representative.

With best regards and solidarity,

Cathy Repola
National Executive Director