

## Motion Picture Editors Guild

### Reimbursable Expenses Guide

In the course of adjusting to the ongoing COVID-19 restrictions implemented across the country, a number of members have asked about the responsibility of employers to reimburse individual employees for additional costs that may be incurred by the employee when the employer has closed its workplace and thus **requires** work to be performed away from the “usual” workplace, i.e., working from home (“telecommuting”). As with many legal requirements governing employment relationships, the answers to these questions may vary from individual to individual, and employer to employer — depending primarily on the state in which the work is performed and the type of expenses incurred by the employee. However, we thought it might be helpful to provide an overview of considerations that may assist members in ensuring that the particular employer is at least attempting to comply with applicable legal requirements. In addition, we encourage members to request the employer provide an outline of its existing policy regarding reimbursement for such additional expenses when negotiating the engagement for such telecommuting work.

#### **Geographical Considerations**

- ❖ A number of states have enacted specific laws addressing employers’ responsibilities to reimburse employees for expenses incurred in the course of employment: California, the District of Columbia, Illinois, Iowa, Montana, New Hampshire, New York, Pennsylvania, and South Dakota. It is important to note that these laws are not necessarily limited to expenses incurred *because* the person is working from home, but rather because the employee is incurring expenses that are required for the employee to do the work and thus benefits the employer (who would otherwise have to provide those “tools of the trade”).
  - Section 2802 of the California Labor Code requires employers to reimburse employees for “necessary expenditures or losses” incurred as a direct result of performing their jobs, so long as those costs are “reasonable.” In most instances, expenses associated with *voluntary* telecommuting arrangements (for the benefit of the employee) are not necessarily reimbursable because the employer is still providing the necessary tools/equipment in the workplace, but the employee is choosing not to use it. That distinction is obviously not applicable if the employer is requiring the work to be done remotely.
  - Long-standing interpretations of New York’s Labor Laws similarly expect employers to reimburse employees for reasonable expenses incurred for the benefit of the employer.
  - If a member is working from home outside of California or New York, and would like additional guidance for a particular state, please contact a Field Rep. If the individual state has not enacted specific laws governing reimbursement of employees’ business-related expenses, the analysis would be made under federal law. The FAQs recently issued by the US Department of Labor can provide additional information on this topic. <https://www.dol.gov/agencies/whd/flsa/pandemic>

#### **Types of Business-Related Expenses**

Employees are entitled to Box Rentals when an employee is utilizing their own equipment to perform their job duties instead of the employer providing them. Additionally, expenses associated with a telecommuting structure may also be reimbursable under applicable law. Separate communication regarding box rentals is forthcoming.

## Motion Picture Editors Guild

### Reimbursable Expenses Guide

Also, some employers may choose to provide employer-owned (or -leased) equipment to members for their use in working from home rather than going through the process of providing a box rental. That approach is also one that we encourage members to discuss as a potential option for securing necessary equipment without incurring the costs themselves.

#### 1. Upgrading “Home Systems”

In order to perform work at home, members may decide to purchase more “powerful” desktop or laptop computer systems and printers, additional computer programs, upgrade existing internet/Wi-Fi connections, or acquire additional home office equipment (such as more ergonomic chairs/desks) and supplies (paper, printer ink, pens/pencils, etc.)

Under most state laws, an employer’s obligation to reimburse those expenses will be judged by whether they are “necessary” for the work to be performed (i.e., were those types of systems, programs, applications, equipment, supplies typically provided by the employer at the workplace), and whether the cost was “reasonable.” Purchases that are “convenient” rather than “necessary” may not be considered reimbursable. Employers may also have obligations to provide certain equipment for home-based work under applicable health and safety laws, and/or to accommodate workers’ disabilities.

#### 2. Additional Usage of Existing Equipment

Because employees are being required to work from home, they may be using their already-owned equipment for work-related activities that would have ordinarily taken place on employer-owned equipment in the “normal” workplace. For example, using personal cell phones for business-related calls, logging onto personal internet/Wi-Fi connections for virtual work-related meetings, printing on home printers, increased home electrical usage, etc.

In California, the courts have determined that employers are required to reimburse employees for a “reasonable percentage” of the use of employee’s personal equipment (such as cell phones or other personal devices, along with internet connections), even if the employee would have incurred those same monthly charges without any business use. Accordingly, employees requesting reimbursement for those types of expenses should be prepared to provide documentation to support an allocation between business versus personal use.

### **Summary**

The Guild encourages each of you to engage in a discussion prior to starting the engagement, or prior to purchasing additional equipment, about what expenses the employer intends to reimburse and what documentation the employer will require to substantiate those expenses. It is the employer’s obligation to determine what expenses should be reimbursed, and in what amount, in order to ensure the employer’s compliance with applicable law. Accordingly, if you believe that you have incurred reasonable expenses that were necessary to perform the requested work, you should submit those expenses for reimbursement with appropriate supporting documentation. If an employer then rejects the requested reimbursement, please reach out to us and we will explore potential avenues for recouping those expenditures under applicable law.