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California Supreme Court clarifies scope of “hours worked”

The California Supreme Court recently clarified whether time spent by employees in vehicular security checks and certain other activities are compensable “hours worked” under California law.

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Background

CSI Electrical Contractors (CSI) provided procurement, installation, construction, and testing services at a solar power facility in California. A subcontractor hired George Huerta (Huerta) to assist CSI in providing on-site services. Access to the site was slowed down by road restrictions to protect endangered species near the site, a vehicular security check on the employer’s premises, and then a 10 to 15 minute drive to the employee parking lot. To leave the site, employees had to wait for and undergo a security check after clocking out. Employees were not paid for the time spent entering and exiting the site or for meal periods. Huerta filed a wage and hour class action against CSI in state court, seeking payment for the unpaid time. The suit was removed to the District Court for the Northern District of California, which granted summary judgment to CSI. Huerta appealed to the Ninth Circuit.

California Supreme Court addresses compensability issues

The Ninth Circuit certified the following three questions to the California Supreme Court about Wage Order No. 16. and the scope of hours worked under California law.

1. “Is time spent on an employer’s premises in a personal vehicle waiting to scan an identification badge, have security guards peer into the vehicle, and then exit a security gate compensable as ‘hours worked’ within the meaning of ... Wage Order No. 16?”
2. “Is time spent on the employer’s premises in a personal vehicle, driving between the security gate and the employee parking lots, while subject to certain rules from the employer,

compensable as ‘hours worked’ or as ‘employer-mandated travel’ within the meaning of ... Wage Order No. 16?”

3. “Is time spent on the employer’s premises, when workers are prohibited from leaving but not required to engage in employer-mandated activities, compensable as “hours worked” within the meaning of ... Wage Order No. 16, or under California Labor Code Section 1194, when that time was designated as an unpaid “meal period” under a qualifying collective bargaining agreement?”

Focusing on the level of control CSI exerted over the workers, the California Supreme Court answered the compensability questions as follows.

Vehicular security checks

The court held that an employee’s time spent on an employer’s premises to wait for and undergo a security procedure before leaving the site could constitute compensable hours worked. California Wage Order No. 16 governs wages, hours, and working conditions for employees like Huerta who work in certain “on-site occupations” in the construction, drilling, logging, and mining industries. It entitles them to receive at least minimum wage for all “hours worked” — defined as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.”

Here, CSI required every worker to comply with an exit procedure that included a vehicle search. Employees remained confined to the site until they completed the exit procedure and were prevented from using the time effectively for their own purposes while awaiting and during exit searches. As the court explained, given the scope of the exit security procedure that was mandated by CSI primarily for its own benefit, the workers — even when in their own personal vehicle — were subject to employer control. Thus, the time awaiting and undergoing the exit procedure constituted “hours worked” within the meaning of Wage Order No. 16 for which the employees must be compensated.

“Hours worked” or “employer-mandated travel”

The court held that time spent traveling between a security gate and employee parking lot would not be compensable as “hours worked” under Wage Order No. 16 “because an employer’s imposition of ordinary workplace rules on employees during their drive to the worksite in a personal vehicle does not create the requisite level of employer control.” However, the time may be compensable as “employer-mandated travel” — a term that is unique to Wage Order No. 16.

As the court explained, “employer-mandated travel” does not require the employee to be subject to the employer’s control to be compensable. The travel need only occur at the employer’s direction — but after the employee arrives at the “first location” where the employer requires their presence for an employment related reason other than simply accessing the worksite (e.g., to pick up work supplies, receive work orders or other directives). Because of conflicting evidence, the court left it to the trier of fact to determine whether the security gate was the “first location” in this case.

Meal period

The court held that when an employee is covered by a qualifying collective bargaining agreement that provides for an “unpaid meal period,” the time would nonetheless be compensable as “hours worked” if the employee is prohibited from leaving the employer’s premises or a designated area during the meal period and if the restriction prevents the employee from using the time for their own purposes.

In closing

Employers should examine their pay practices in light of the California Supreme Court’s opinion, especially regarding security procedures and site restrictive meal periods. Although the decision discusses “hours worked” in the context of construction, drilling, logging and mining industries, it is likely to have broader implications.

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