

Sending an Employee on a Business Trip? You'll Have to Pay More for That in Washington State

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In deferring to the Washington Department of Labor and Industries' ("Department") interpretation of its own regulation, a Washington Court of Appeals ruled that employee's' out-of-town travel time—including travel time to and from the airport, time in the airport, and time in the air—on behalf of their employer was compensable, a far broader interpretation than applied under the federal Fair Labor Standards Act.

In *Port of Tacoma v. Joel Sacks, Department of Labor & Industry*, the Department investigated wage claims filed by four employees who had been sent by their employer, the Port of Tacoma, to be part of a quality inspection team in China to observe the manufacturing process of cranes that were to be purchased by the Port. The Port made all the arrangements for the trips, including air transportation. Consistent with their union's agreement with the Port, the employees were paid a maximum of eight hours per day, regardless of the actual time spent traveling. In their wage claims, the employees argued they were entitled to payment for all travel time: including travel to and from the airport, all time spent at the airport, and all time spent in flight. The Department agreed and issued a citation to the Port, who in turn challenged the citation. The lower court granted summary judgment in favor of the Port and held that "travel time" did not meet the definition of "hours worked," and was not compensable. The employees appealed.

The Court of Appeals reversed, reaching the opposite conclusion for three reasons:

- Out-of-town travel is different than the daily commute, which is not compensable "hours worked";
- The Court owed deference to the Department's interpretation of its own regulations, which had found that the out-of-town travel was compensable "hours worked"; and
- Out-of-town travel being compensable "hours worked" was consistent with the plain language of the state wage laws requiring compensation for work "on duty" and with the liberal construction given to those laws in favor of the worker.

Washington employers should revisit their travel-time policies and practices to ensure that non-

exempt employees are paid for all out-of-town travel time—even time when the employees are not engaged in work for the company. When arranging for out-of-town travel for employees, employers should pay attention to the amount of time that such travel will entail—and consider flights with shorter layovers, hotels closer to the airport, and other similar considerations. The ruling also makes clear that employers should pay close attention to Department guidance and interpretation.

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