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WAGE AND HOUR LAW

Optional home dispatch program does not trigger paid travel time

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A class of cable service technicians sued their employer to collect payment for the commuting time they spent transporting equipment in company cars under a voluntary program. The trial court granted summary judgment in favor of the company, dismissing the case without a trial after it found the time was not compensable. The court of appeal affirmed, concluding that (1) because the program was optional, the technicians' time was not subject to the company's control and (2) merely transporting equipment during a commute does not warrant compensation when no significant extra time or effort is required.

Technicians sue Pacific Bell over unpaid travel time

Pacific Bell Telephone Company's "U-Verse" service provides in-home video and high-speed Internet. U-Verse premises technicians are paid on an hourly basis to install and repair products at customers' homes. Shifts begin at 8:00 a.m. and last eight hours. Technicians must use company vehicles to transport the equipment and tools they need for the job.

Previously, the company required technicians to pick up the vehicles each day at a Pacific Bell garage. The technicians' workday began at the garage, and they were paid for the time between picking up the vehicles at the garage and arriving at their first worksite and for the time they spent driving back to the garage from their final worksite at the end of the day.

In 2009, Pacific Bell introduced the Home Dispatch Program (HDP), which gives technicians the option of taking a company vehicle home at night instead of traveling to and from the garage every day. Participating technicians must arrive at their first worksite by 8:00 a.m. They are not paid for the time they spend driving from home to the first worksite or for time they spend driving home at the end of the day.

HDP technicians are paid to drive to the Pacific Bell garage once a week and load any necessary equipment and tools, which must be stored in the company vehicle. The vehicle is to be used only for company business.

HDP technicians are not permitted to run errands in the company vehicle, make calls while driving, or transport family members. Technicians who opt out of HDP are paid for the time they spend traveling to and from the company garage, as was the norm before the program was introduced.

Israel Hernandez and Larry Michael Sharp brought a class action lawsuit on behalf of HDP premises technicians, alleging that Pacific Bell owed them wages for the time they spent transporting equipment and tools in company vehicles. The lawsuit included claims for failure to pay the minimum wage and timely wages and for unfair business practices. The trial court sided with Pacific Bell, concluding the travel time in question is not compensable work time. The court of appeal affirmed the decision.

When is travel time paid as work time?

California's Industrial Welfare Commission defines compensable "hours worked" as the time during which an employee is subject to the control of an employer, including all the time the employee is "suffered or permitted to work, whether or not [he is] required to do so." That means an employee must be paid for all hours during which he is subject to the employer's control (even if he is not actually performing work) and for all work time (even if he is not under the employer's control) if the employer is aware that work is being done. That standard applies to time employees spend commuting to and from the workplace.

For example, when an employer required agricultural employees to ride in company-provided buses to a worksite, the courts deemed their commuting time to be compensable because the employer controlled when, where, and how the employees traveled and they could not use the time for personal activities. By contrast, when an employer offers optional voluntary employer-sponsored transportation, the commuting time is generally not compensable.

HDP commuting time is not compensable under the control test

On appeal, the technicians argued that the HDP restrictions, including the prohibition against using Pacific Bell vehicles for personal business or for transporting unauthorized passengers, evinced sufficient employer control that the time spent traveling to and from home to a worksite in a company vehicle, carrying equipment and tools, constituted compensable “hours worked.”

In response, Pacific Bell emphasized that participation in the HDP is optional, not compulsory. The court of appeal agreed, pointing out that because the technicians voluntarily elect to commute in a company vehicle, they are not subject to Pacific Bell’s control and are not entitled to compensation for their commuting time.

HDP commute is not recognized work time

The technicians also argued that the disputed commuting time is compensable as “hours worked” under the “suffered or permitted to work” standard. The technicians asserted that they are working while they are driving because they are transporting equipment and tools that are necessary to perform their job. The “suffered or permitted to work” standard is met when an employee is working on tasks recognized as work but is not subject to the employer’s control. The mere transportation of tools and equipment, which does not add time or exertion to a commute, does not meet that standard.

The court of appeal distinguished the relatively minor efforts expended by technicians who carry household telecommunications equipment in their vehicles from the efforts of workers who deliver heavy specialized equipment to a jobsite. In this case, the technicians are merely commuting with the necessary work tools, which requires far less effort. Even if certain equipment like modems or cable boxes are slated for delivery, Pacific Bell pays the technicians to deliver and install basic equipment beginning when they arrive at the first customer’s location.

The court noted that to hold that the transport of all equipment and tools during a commute is compensable work would require that compensation be paid for the commutes of police officers who take their guns home or employees who carry badges. Indeed, if carrying equipment necessary for the job is always compensable, every employee who travels with a briefcase full of work documents or an electronic device to access work e-mails would need to be compensated for commuting time. *Hernandez v. Pacific Bell Telephone Company* (California Court of Appeal, 3rd Appellate District, 11/15/18).

Bottom line

The rules governing payment for travel time, including commuting, require a fact-specific analysis. Getting

it wrong exposes an employer to potentially significant wage and hour liability, including penalties and attorneys’ fees. In this case, the court applied a commonsense approach to the issue, to the employer’s benefit.

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