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February 18, 2020

California Supreme Court Requires Employers to Pay for Mandatory Exit Searches

The California Supreme Court recently [issued](#) a decision holding that the time spent on an employer's premises waiting for and undergoing required exit searches is compensable time that must be paid to employees. The decision was a response to a question from the U.S. Court of Appeals for the Ninth Circuit and followed the court's 2018 decision in *Troester v. Starbucks Corp.* (2018) 5 Cal.5th 829. In *Troester*, the court rejected the federal *de minimis* doctrine, which supported the argument that pre- or post-liminary work of ten minutes or less was not compensable.

The employer involved in this case utilized a bag search policy requiring all personal packages and bags to be checked before leaving the company's premises. Employees were required to clock out before submitting to the exit search, and estimated that they spent between 5 and 20 minutes waiting for and undergoing the exit search.

The California Supreme Court analyzed Wage Order 7's requirement that employers pay for all "hours worked" and stating that an employee who is "subject to the control of an employer does not have to be working during that time to be compensated under the applicable wage order." The court determined that during the exit search the employees were subject to the employer's control.

The California Supreme Court provided some guidance on how courts should determine whether an employee is subject to an employer's control and entitled to compensation. Specifically, for onsite employer activities, courts should consider the mandatory nature of the activity, and other relevant factors which include "the location of the activity, the degree of the employer's control, whether the activity primarily benefits the employee or employer, and whether the activity is enforced through disciplinary measures."

Importantly, the California Supreme Court held that this decision applies retroactively.

In light of the California Supreme Court's recent decisions, employers should consult experienced counsel to ensure that employees in California are properly compensated.

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