

## **Ninth Circuit Says Time Spent in Airport Security Lines Is Not Compensable Work Time**

In an unpublished opinion, the Ninth Circuit [held](#) that an employer is not required to pay employees for time spent undergoing government-required security checks enforced by a governmental body to access the worksite. Plaintiff Jesus Cazares claimed his employer, Host International, Inc, a major airport lounge and restaurant operator, violated California's Labor Code and unfair competition law by not paying employees for time spent going through airport security lines on the way to their worksite at the Admiral Club at Los Angeles International Airport. The Ninth Circuit affirmed the district court's dismissal of Cazares' claims at the pleading stage, holding the complaint "fails to state a viable claim for unpaid wages because it does not allege facts sufficient to show he was subject to any level of control by Host during the security checks." Applying *Frlekin v. Apple Inc.*, the court explained that the level of control is "determinative" in assessing whether an activity is compensable work time. Because the security checks were mandated by federal law, not by the employer, and were administered by a federal body, the Transportation Security Administration (TSA), the complaint lacked sufficient allegations of employer control. The court rejected the argument that because employees must pass through a TSA checkpoint to arrive at the worksite, an inference of control is created. The court also affirmed the dismissal of:

- Meal break claims based on the theory that employees did not have time to leave the airport and return within the allowed 30-minute break period because of the security checks. The Ninth Circuit held the employer was not required to ensure employees could leave the secured area of the airport in order to satisfy the meal break obligation; it was sufficient that the employees could leave the worksite (the Admiral Club).
- Short rest break claims based on the theory that employees had to walk to a designated rest break area, resulting in short breaks. The Ninth Circuit rejected this theory because there were no factual allegations that his employer required him to take his rest period at a particular designated area that required him to walk nor were any facts alleged about the employer's policies regarding the location or duration of his rest break.
- Derivative late meal and rest break claims based on the theory that the "clock" should have started when employees went through the security checkpoints. Because the employer was not required to compensate employees for this time, the meal and rest break claims were not, under this theory, late.
- Derivative wage statement, waiting time penalties, and unfair competition law claims.

The Ninth Circuit's ruling reemphasizes that California law governing compensable work time remains focused on the level of control that an employer exercises over its employees. Employers with questions about California wage and hour law should contact experienced counsel.

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