



when time is on the employee's side: the california supreme court provides guidance on what constitutes working time

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Late last month, the California Supreme Court handed down its long-awaited decision in *Huerta v. CSI Electrical Contractors*, clarifying three questions posed by the United States Court of Appeals for the Ninth Circuit.

Facts of the Case

Plaintiff George Huerta and others were hired by subcontractor CSI Electrical Contractors (CSI) for work at a solar power facility in northern California. Huerta was told by CSI that an initial entry security gate (about a 10 to 15 minute drive from the employee parking lots), was the first place he had to be at the beginning of each workday. Every morning, employees' vehicles formed a long line at the security gate, where guards scanned employee badges and occasionally inspected vehicles before they were allowed to proceed to the lots.

At lunch time, Huerta received an off-duty unpaid meal break, but was prohibited from leaving the premises.

At the end of each day, workers again formed a long line inside the security gate for a similar procedure to exit the property, which delayed workers' leaving by anywhere from 5 to 30 minutes. Workers were not paid for waiting to pass through the security gate at the beginning or end of each work day.

Issues Decided by the California Supreme Court

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The 9th Circuit, seeking guidance on state law, certified three questions to the California Supreme Court:

- Is time spent on an employer's premises in a personal vehicle and waiting to scan an identification badge, having security guards peer into the vehicle, and then exiting a security gate compensable as "hours worked" within the meaning of California Industrial Welfare Commission Wage Order 16?
- Is time spent on an employer's premises in a personal vehicle, driving between the security gate and the employee parking lots, while subject to certain rules of the employer, compensable as "hours worked" or as "employer-mandated travel" within the meaning of IWC Wage Order 16?
- Is time spent on an employer's premises, when employees are prohibited from leaving but not required to engage in employer-mandated activities, compensable as "hours worked" under Wage Order 16 or under Labor Code section 1194, when that time was designated as an unpaid 'meal period' under a qualifying collective bargaining agreement (CBA)?

With some qualifications, the Court essentially answered all three questions in the affirmative.

1. ***Is time spent on an employer's premises in a personal vehicle and waiting to scan an identification badge, have security guards peer into the vehicle, and then exit a security gate compensable as 'hours worked'?***

Relying on its previous reasoning in *Frlekin v. Apple Inc.*, 8 Cal. 5th 1038 (2020) (wherein the Ninth Circuit posed a similar question regarding employees spending time on premises for security screenings), the Court held that such time spent in a personal vehicle is in fact compensable as "hours worked". The Court reiterated that time is compensable where there are sufficient 'indicia of control' exercised by an employer over employees as they waited for exit searches, meaning that where an employer directs, commands or restrains an employee from leaving the workplace (thereby preventing the worker from using that time for their own purposes) that employee remains subject to the employer's control.

In *Huerta*, the Court thus found that "[w]hen an employee spends time on his employer's premises awaiting and undergoing an exit security procedure that includes a vehicle inspection causing delay and that is mandated by the employer for its own benefit, the employee — even when in a personal vehicle — is subject to the employer's control, and the time is compensable as "hours worked" within the meaning of Wage Order No. 16." Relatedly, the Court held that an employee's merely being subject to various workplace rules and policies while travelling to clock in was insufficient in and of itself to render such time legally compensable.

1. ***Is time spent on an employer's premises in a personal vehicle, driving between the security gate and the employee parking lots compensable as "hours worked" or as "employer-mandated travel"?***

As to the second question, the Court looked to the language of Wage Order No. 16 itself (which contains provisions on "employer-mandated travel" not found in other Wage Orders), and which states that "[a]ll employer-mandated travel that occurs after the first location where the employee's presence is required by the employer shall be compensated at the employee's regular rate of pay or, if applicable, the premium rate." As a result, the Court held that the time an employee spends traveling between the security gate and employee parking lots is



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compensable as 'employer-mandated travel' under the applicable wage order *if* the security gate is the first location where the employee's presence is required for an employment-related reason (other than the practical necessity of accessing the worksite).

The Court noted that examples would include situations where an employee's presence at an initial location is required for activities such as picking up supplies, receiving orders or directives, or performing other work before traveling to a second jobsite.

1. ***Is time spent on an employer's premises, when workers are prohibited from leaving but not required to engage in employer-mandated activities, compensable as "hours worked"?***

In answering the final question, the Court determined that the time an employer prohibits an employee from leaving the employer's premises (thus preventing the employee from engaging in offsite personal activities) is indeed considered "hours worked" and is therefore compensable.

The Court explained that, even though CSI's agreement with the workers' labor union included an unpaid half-hour meal break each day, the Wage Order exemptions from meal period requirements for employees working under such agreements *did not* override their right to seek compensation in the form of at least minimum wage during an unpaid meal period where they were not free to leave the premises. Notably, however, the Court did not address the extent to which practical restrictions or impediments on employees using their time during meal breaks as desired renders such time compensable.

While it remains to be seen how the holdings set forth in *Huerta* will be applied to other scenarios, California employers with questions regarding compensable time should not hesitate to reach out to their trusted MSK Labor & Employment attorney.