

Frlekin v. Apple: Employees Must Be Compensated for Time Spent Undergoing Exit Searches

On February 13, 2020, in *Frlekin v. Apple, Inc.*, No. S243805 (Cal. 2/13/2020), the California Supreme Court determined that Apple employees must be paid for time spent waiting for and undergoing exit bag searches. Although Apple does not require its employees to bring bags to work, the Court concluded that the search time amounts to time under which the employees are under Apple's "control," as that term is defined in the California Wage Orders.

Apple's "Employee Package and Bag Searches" policy requires its retail store employees to undergo exit searches of their bags and personal Apple technology devices before leaving the store. Employees reported generally waiting from five to 20 minutes for these searches to be completed, depending on the availability of a manager or security personnel to conduct the search.

The California Supreme Court observed that, under California law, "hours worked" includes both (1) time when an employee is subject to the employer's control and (2) time when an employee is "suffered or permitted to work." Focusing on the control clause, the Court observed that an employee who is *subject to the control* of an employer does not have to be working during that time to be owed compensation.

The Court instructed that "the level of the employer's control over its employees, rather than the mere fact that the employer requires the employees' activity, is determinative" of whether an activity is compensable. As to determining whether an employee is subject to the employer's control while onsite at the employer's premises, factors to be considered include: (1) whether an activity is required, (2) the location of the activity, (3) the degree of the employer's control, (4) whether the activity primarily benefits the employee or employer, and (5) whether the activity is enforced through disciplinary measures.

Applying these factors to Apple's policy and practice, the Court found that the employees were under Apple's control while awaiting and during the exit searches because the searches: (a) were required as a practical matter; (b) occurred at the workplace; (c) involved a significant degree of control; (d) were imposed primarily for Apple's benefit; and (e) were enforced through threat of discipline. Thus, the Court held that employees



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must be paid.

Importantly, the Court's decision here does not change prior decisions involving time spent traveling to and from work, which generally is not compensable unless compulsory.

Employer Takeaway

This control clause analysis will apply not only to retail employers, but to all employers who exercise some degree of control over employees at the worksite who are off the clock, whether to conduct bag checks or for some other activity. Employers should revisit their policies and practices to determine whether they place any off-the-clock control over employee activities that may require compensation. Employers also should be aware that the *Frlekin* holding is **retroactive**, which means that employers may be subject to claims for unpaid wages reaching back several years, even if they do revise their existing policies and practices.

If you have any questions, please contact your Hanson Bridgett attorney.

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