



Employment Law Note

October 2021

Washington State Puts Time Traveling Out of Town on the Payroll



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Washington courts have a long-standing policy of protecting employees and routinely hold employers liable in wage and hour cases, generously interpreting state law in favor of employees. Wage and hour claims can be particularly expensive. Employers can be liable not only for the claimed owed wages but also for double damages, 12% prejudgment interest, and the employee's attorney's fees and costs. Travel time can be a trap for unwary employers. Under federal law, employers are not required to pay hourly employees for travel outside of normal working hours if they are not working. Washington law is different. Recently, in *Port of Tacoma v. Sacks*, No. 54498-9-II, 2021 WL 4271356 (Wash. Ct. App. Sept. 21, 2021), a Washington Court of Appeals decision highlighted that distinction and held that an employer must compensate its employees for their out-of-town travel, including the time spent driving to the airport until when checked in at the hotel and the time spent on the return trip from the hotel back to the employee's home.

In this case, the Port of Tacoma sent four mechanics on out-of-town trips - first to China as part of a quality inspection team to observe the manufacturing process of crane components that they would later repair, and then to Houston for

training on the cranes. The Port paid for travel time at a maximum of eight hours a day straight time. The Port negotiated this provision with the mechanics' union, and the provision was consistent with the federal Portal-to-Portal Act. The mechanics, however, wanted more than eight hours of pay and sought compensation for the time travelling to and from the airport, time spent at the airport, and all of their flight time. They filed a wage complaint with the Washington State Department of Labor & Industries, which agreed with them that all out-of-town travel time was compensable under Department policy.

Besides noting that it had already paid the employees for eight hours of work during the travel day and paid at a rate negotiated by the employees' union, the Port argued to the Court of Appeals that claimed additional travel time was not compensable because the employees performed little or no work while they traveled. The Port analogized the travel time to commuting to work. That is, the employees were in control of their time and engaged in personal activities while traveling. The *Port of Tacoma* court rejected the argument because the out-of-town travel was not similar to a daily commute to work. The *Port of Tacoma* court held that, unlike under federal law, "[i]n Washington, all travel time related to work is compensable regardless of the hours when it takes

place and includes the time to get to the airport or train station.” All travel time was thus compensable as “hours worked.” The court confirmed the Washington State Department of Labor & Industries’ interpretation that all travel time related to work is compensable, regardless of when it takes place. In the opinion, the court emphasized that the at-issue travel was at the behest and for the benefit of the Port and was a necessary part of the assigned task for the mechanics. And, the court observed, the time spent traveling was time that the mechanics would otherwise have been engaged in their own non-work activities.

This case creates an important distinction between compensable travel time for out-of-town work and non-compensable “normal” daily commute time. All travel time away from an hourly employee’s home city is compensable travel time under Washington law. That travel is compensable from when the employee leaves his or her home until arriving at the hotel in the other city (and the return trip back to the employee’s home). Employers should review their travel-time policies to ensure that those policies are consistent with this important ruling.

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