

## [Updates](#)

October 05, 2021

### No More Free Flights: Employee Travel Time Is Now Compensable Under Washington Law

In *Port of Tacoma v. Sacks*, the Court of Appeals of the State of Washington recently held that all out-of-town employee travel time is compensable under state law.<sup>[1]</sup> The decision confirms the Washington State Department of Labor & Industries' (L&I) interpretation that all travel time related to work is compensable, regardless of when it takes place. Accordingly, all businesses with hourly employees located in Washington should become familiar with the changes to the law.

#### **Facts**

In this case, L&I issued a citation to the employer for wages owed to four employees following a trip to China. Pursuant to an agreement between the employer and the workers' union, the employer paid the employees eight hours per day for travel to, from, and within China, but did not pay the employees for all their time spent traveling. The employees filed wage claims with L&I seeking compensation for all their time spent traveling, including all travel to and from airports, all time spent at airports, and all time spent in flight. Pursuant to L&I's definition of "hours worked" in WAC 296-126-002(8) and the guidance contained in L&I's nonpublic Desk Aid, the department issued a citation to the employer for wages owed to the employees from the trip to China, which the employer appealed.

#### **Analysis**

On appeal, the Washington Court of Appeals held that travel time for out-of-town travel constitutes "hours worked" under Washington law for three reasons. First, the court distinguished its precedent in *Anderson*<sup>[2]</sup> and *Stevens*<sup>[3]</sup> and held that both of those cases involved interpretations of "hours worked" within the context of an employee's daily commute while this case dealt with employees' out-of-town travel. Second, the court held that L&I's interpretation of WAC 296-126-002(8) was entitled to deference because it reflected a plausible construction and was not contrary to legislative intent. Third, the court held that L&I's interpretation was consistent with both the plain meaning of the regulation and Washington's long-standing policy of protecting employees. Accordingly, the court found the employer liable for unpaid wages and remanded the case for further proceedings.

#### **Takeaways**

Overall, this case presents significant changes for all businesses with employees located in Washington state because now all employee time spent traveling out of town is compensable under state law. Previously in Washington and under [federal law](#), employers were not generally required to pay hourly employees for their time spent traveling outside of normal working hours as long as the employees did not work during the travel. Now, however, employers must compensate Washington employees for all their time spent traveling out of town pursuant to the court's recent decision. Accordingly, all businesses with hourly employees located in Washington should revise their travel time policies to ensure compliance with the changes to the law. Finally, employers should consult with trusted legal counsel if they have any questions or concerns regarding compensating employees for their time spent traveling.

#### **Endnotes**

[\[1\] \*Port of Tacoma v. Sacks\*, No. 54498-9-II, 2021 WL 4271356, at \\*1 \(Wash. Ct. App. Sept. 21, 2021\).](#)

[\[2\] \*Anderson v. State, Dep't of Soc. & Health Servs.\*, 115 Wash. App. 452, 63 P.3d 134 \(2003\) \(holding that employees' daily commute time was not "hours worked" under WAC 296-126-002\(8\)\).](#)

[\[3\] \*Stevens v. Brink's Home Sec., Inc.\*, 162 Wash. 2d 42, 169 P.3d 473 \(2007\) \(same\).](#)

© 2021 Perkins Coie LLP

## Authors

## Explore more in

[Labor & Employment](#)

## Related insights

Update

### [\*\*HHS Proposal To Strengthen HIPAA Security Rule\*\*](#)

Update

### [\*\*California Court of Appeal Casts Doubt on Legality of Municipality's Voter ID Law\*\*](#)