



The California Supreme Court recently [issued a decision](#) in *Huerta v. CSI Electrical Contractors* addressing three questions from the United States Court of Appeals for the Ninth Circuit regarding Wage Order No. 16 (which applies to certain on-site occupations in the construction, drilling, logging, and mining industries) and the scope of the term "hours worked."

### **Brief Factual Background**

In this case, the plaintiff alleged that he and others like him were required to undergo vehicular security checks upon entering and leaving work. In the morning, vehicles formed a line outside a security gate, where guards scanned each worker's badge and sometimes inspected vehicles. The security gate was an approximately 10-to-15-minute drive to the employee parking lot. At the end of the day, the exit procedure could take up to a minute

or more per vehicle and cause delays of five to over 30 minutes. The plaintiff alleged that he was not paid for the time spent waiting to pass through the security gate at the beginning or end of the workday.

Additionally, two collective bargaining agreements (CBAs) specifying that the standard workday included an unpaid 30-minute meal period governed the plaintiff's employment. Notwithstanding the provision in the CBAs, the plaintiff alleged the company did not allow workers to leave the worksite during the workday and instructed workers to spend their meal periods at a designated area.

## **Supreme Court's Decision**

In its opinion, the court answered three questions posed by the Ninth Circuit, described below.

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"?*

To answer the first question, the court relied on an analogy to a prior opinion in which the court found bag checks constituted compensable hours worked. The court held that "an employee's time spent on an employer's premises awaiting and undergoing an employer-mandated exit procedure that includes the employer's visual inspection of the employee's personal vehicle is compensable as 'hours worked' within the meaning of Wage Order No. 16." In so holding, the court noted the process extended beyond the time necessary to scan a badge or delays that may result from ordinary traffic congestion at the end of the workday.

2. *Is time spent on the employer's premises in a personal vehicle, driving between the Security Gate and the employee parking lots, while subject to certain rules from the employer, compensable as "hours worked" or as "employer-mandated travel"?*

The court held that "the time an employee spends traveling between the security gate and the employee parking lot is compensable as 'employer-mandated travel' under Wage Order No. 16, section 5(A) if the [s]ecurity [g]ate 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 explained that for travel time to be compensable as "employer-mandated travel," under Wage Order No. 16, "there must be evidence not only that the employer required the employee's presence at an initial location before mandating travel to a subsequent location, but also that the employee's presence was required for an employment-related reason other than accessing the worksite." The court noted that relevant considerations to this inquiry include, but are not limited to, the purpose served by the employee's presence at the location, the activities that occurred there, and the amount of time spent there.

Additionally, the court held that time spent traveling between the security gate and the employee parking lot was "not compensable as 'hours worked' because an employer's imposition of ordinary workplace rules on employees during their drive to the worksite in a personal vehicle does not create the requisite level of employer control."

3. *Is time spent on the employer's premises, when workers are prohibited from leaving but not required to engage in employer-mandated activities, compensable as "hours worked" when that time was designated as an "unpaid meal period" under a qualifying collective bargaining agreement?*

The court addressed Wage Order No. 16 and Labor Code section 512(e), which applies to employees covered by a CBA in certain occupations (including construction). This section exempts certain employees from the statute's meal-period requirements if the CBA meets the requirements set forth in the statute.

It was uncontested that the CBAs met the requirements set forth in the statute and wage order and included an unpaid 30-minute meal break each day. Notwithstanding, the court held that "when an employee is covered by a collective bargaining agreement that complies with Labor Code section 512, subdivision (e) and Wage Order

No. 16, section 10(E), and that agreement provides for an 'unpaid meal period,' that time is nonetheless compensable under the wage order as 'hours worked' if the employer prohibits the employee from leaving the employer's premises or a designated area during the meal period and if this prohibition prevents the employee from engaging in otherwise feasible personal activities." In so holding, the court noted that "the fact that the features of a worksite make travel impractical in the time allotted is not sufficient to establish employer control."

## **Takeaways**

California employers with mandatory screening procedures or meal periods subject to CBAs should review such policies to ensure compliance with California law. California employers with questions about wage and hour compliance should contact experienced counsel.

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