

Washington's Travel Time Trap for Employers

by Aaron Goldstein and Michael Droke

Figuring out when you have to pay employees for travel time can be tricky in any state. A Washington Court of Appeals just held that the rules for determining when travel time is compensable are significantly more employee favorable in Washington than under federal law, adding yet another wrinkle for employers with employees in Washington.

Under federal law, employers generally don't have to pay hourly employees for travel outside of normal working hours. For example, if an hourly employee usually works 8am to 5pm and travels from 2:00pm to 8:00pm, the three hours spent traveling during the employee's normal working hours are compensable while the last three hours spent traveling outside the employee's normal working hours are not, so long as the employee isn't doing any work. Employers also do not need to pay employees for time spent driving to the airport or hotel since such time is considered part of the employees' normal non-compensable commute time.

The Washington Court of Appeals, Division II issued an opinion on September 21, 2021 affirming that Washington's travel pay rules are substantially more employee friendly. In *Port of Tacoma v. Sacks*, the Court ruled that four hourly employees who traveled to China to observe the manufacture of four cranes had to be paid for all travel time to and within China—not just the eight hours per day the employer had negotiated with the workers' union.

The Court of Appeals followed the Washington Department of Labor & Industries' position 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."

Employers need to take special care when assessing their travel time policies for hourly employees based in Washington. The federal rules governing the compensability of travel time for hourly employees can be complicated, but they usually exclude time spent traveling outside of normal working hours and time spent traveling to and from the airport

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or to and from the employee's hotel when the employee is traveling outside of their home city. As the Washington Court of Appeals made clear, all travel time away from an hourly employee's home city is compensable travel time under Washington law. Employers should make sure their travel time policies are updated for their Washington based employees.