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Washington Supreme Court Holds That Drive Time To First Jobsite From Home and From Last Jobsite To Home in Company-Issued Vehicle May Be Compensable "Work Time" Under Washington Minimum Wage Act

# **Breaking Developments In Labor and Employment Law** 10/14/07

In *Stevens v. Brink's Home Security, Inc.*, a class of installation and service technicians ("Technicians") filed suit against their employer, Brink's, alleging that the time they spent driving company-issued vehicles from their homes to the first assigned jobsite, and from the last jobsite back home, was compensable work time under Washington's Minimum Wage Act ("MWA"). On October 18, 2007, the Washington Supreme Court agreed, affirming the trial court's summary judgment in favor of the Technicians.

Under an optional "Home Dispatch Program," Brink's issued its Technicians pick-up trucks bearing the Brink's logo and equipped with the tools they needed to perform their work. The Technicians were permitted to keep these vehicles at their homes. Technicians who chose this option would receive their daily assignments via voicemail or hand-held computer and would dispatch to their first jobsite from home, rather than traveling to Brink's Kent office in their own vehicles to retrieve a Brink's truck, and later would return directly home after completing work at the last job site. Although Brink's paid Technicians who dispatched from its company office in Kent for drive time between the office and their first and last jobsites, it did not pay those who participated in the "Home Dispatch Program" for drive time between their homes and their first and last jobsites. The class action filed by the Technicians challenged Brink's practice of characterizing this drive time as noncompensable "commute time."

#### Workers Were "On Duty" at a "Prescribed Workplace" As Defined in the WAC While Driving Work-Issued Vehicles To The First Jobsite and Home From The Last Jobsite

According to the Supreme Court's ruling, the Technicians' drive time fell within the Washington Administrative Code's ("WAC") definition of "hours worked" because the Technicians were "on duty" while driving the company-issued vehicles to the first jobsite and from the last jobsite, even though they started from, and returned to, their homes. The Court reasoned that the employees were "on duty" because the Technicians:

- Were only permitted to use the vehicles for company purposes;
- Were not permitted to allow non-employees as passengers in the vehicles;

- Were not permitted to run personal errands while using the company vehicle; and
- Were required to obey all traffic laws, wear seatbelts, lock the vehicles, and refrain from parking haphazardly or carrying alcohol in the vehicles.

The Court also relied on the following undisputed facts: (1) because the Technicians received their assignments at their homes, they spent time logging the assignments and mapping out the best routes before commencing their drives; (2) Brink's could redirect the Technicians to a different jobsite at any time; and (3) Technicians on the Home Dispatch Program only visited the Brink's Kent office once per week. The Supreme Court specifically noted that, unlike the employees in a prior case whose initial and end-of-day commute time on a state-run ferry was held by the Court *not* to be compensable, Brink's restricted the Technicians' personal activities and controlled their time, making the drive time compensable under the MWA.

The Supreme Court then held that the Brink's truck was a "prescribed workplace" as defined in the WAC, reasoning that the Technicians completed paperwork in the vehicle and had to keep the vehicle well-organized, safe and maintained, like any other work premises.

For all of these reasons, the Court concluded that the Technicians were "on duty" at a "prescribed work place" during the drive time and accordingly were entitled to compensation for this time under the MWA.

### <u>Twelve Percent Per Year is Appropriate Rate for Prejudgment and Postjudgment Interest</u> <u>for Violations of the MWA</u>

Ruling on a separate issue, the Supreme Court also held that the Technicians were entitled to prejudgment and postjudgment interest at a rate of 12 percent per year, rather than the statutory interest rate for tort claims (2 percent above the six-month treasury bill rate), holding that an employer's failure to pay employees properly under the MWA was not "tortious conduct." Rather, the employer was "unjustly enriched" by failing to pay employees as required. Accordingly, because the Technicians' claim was not founded on tortious conduct, the interest rate of 12 percent per year, the highest permitted under Washington law, was appropriate.

#### What This Means For Employers

Employers who issue company vehicles to their employees and permit the employees to take the company vehicle home should review their policies regarding the employees' use of the vehicles. In particular, employers should determine the extent to which their restrictions on employees' conduct regarding the vehicles are similar to the ones that persuaded the *Stevens* court to find that employees driving to and from their homes in a company-issued vehicle are "on duty" and whether the vehicle itself constitutes a "prescribed place of work," rendering beginning and ending drive time "hours worked." Employers who conclude that the drive time between home and the employees' first and last jobsites may be considered compensable drive time under the *Stevens* decision will want to consult counsel and consider changes to their policies and/or pay practices.

Finally, the holding that employees who prove violations of the MWA will be awarded prejudgment and postjudgment interest at a 12 percent per year interest rate will make such violations more expensive to resolve after the fact, and the holding serves as additional incentive to employers to regularly review their pay practices with counsel to ensure compliance with the law.

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