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LEGAL UPDATES

Steer Clear Of Potholes and Road Hazards: A Review Of When California Employees Must Be Paid For Travel Time

As a general rule, non-exempt employees in California are not entitled to be compensated for their regular commute to and from the workplace.

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As a general rule, non-exempt employees in California are not entitled to be compensated for their regular commute to and from the workplace. Non-exempt employees are entitled to payment for all hours worked, however, which includes all the time an employee is "suffered or permitted to work, whether or not required to do so," and the time during which the employee is subject to the control of their employer. In order to comply with the law, employers must be familiar with the various exceptions to the general rule and the circumstances in which non-exempt employees must be paid for time spent traveling.

Let's look at the federal laws first. Under federal law, regular commuting to and from work is ordinarily not compensable working time. However, employers must pay their non-exempt employees for travel time in these situations:

- One-day jobs: Employers must pay non-exempt employees for travel time for a one-day assignment in another city if the time the employee spends in transit exceeds the employee's usual commuting time.
- Travel time from job to job: Employers must pay non-exempt employees for travel time spent traveling during an employee's regular working hours, such as from job site to job site, or for travel after the first principal activity of the day.
- Overnight work: Employers must pay non-exempt employees for travel time that keeps the employee away from home overnight if the travel time occurs during the employee's normal working hours, or during those same hours on days, such as weekends, when the employee does not ordinarily work.
- Work performed while traveling: Employers must compensate non-exempt employees for all work that an employee is required to perform while traveling.

In California, many employers provide optional employee ridesharing. When an employer offers employees the opportunity to use company-provided transportation to and from the worksite, such as a commuter bus, the time spent commuting is not compensable if the rideshare is purely voluntary.

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While regular commute time to and from the workplace is generally not compensable, California law requires employers to pay their non-exempt employees' travel time in the following scenarios:

- **Starting the day at a Company-owned facility:** When a company requires an employee to report to the employer's business premises before heading to an off-premise worksite, the time from when an employee reports to the company facility until the employee is released from duty constitutes hours worked.
- **Mandatory bussing:** California employers must pay their non-exempt employees for the time they spend traveling between a company-controlled departure site and a remote job site because employees are subject to their employer's control while traveling between the company site and the remote work site. Notably, travel time from the employee's home to the company site is not compensable.
- **Out-of-town work events:** California employers must also pay non-exempt employees for all time spent traveling to and from out-of-town events, including the time spent waiting to purchase tickets, check baggage, or board a flight, bus, train, etc. However, employers are not required to pay employees for time spent eating meals, sleeping, or engaging in purely personal pursuits which are not connected with traveling.

What Should Employers Do Now?

- **Review your policies and practices related to travel time for non-exempt employees:** California employers should review their policies and practices related to travel time to assure that non-exempt employees are paid in accordance with current law. Given the impact of the COVID pandemic on "regular" business operations, non-exempt employees whose primary or official workplace is their home may be entitled to be paid for time spent traveling to the employer's facility on those occasions when they do so.
- **Remember that exempt employees are not entitled to additional pay for time spent traveling:** Exempt employees receive a fixed salary that compensates them for their work, regardless of the number of hours they work, so they are not entitled to additional compensation for travel time, including travel time outside normal business hours. Exempt employees, like all employees, are entitled to reimbursement for expenses incurred in the course of business travel, however.

If you have questions regarding travel time or any other issue related to employment law, please contact one of our employment & labor attorneys.