

California Supreme Court Holds That Time Employees Spent On Mandatory Exit Inspections Is Compensable

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Key Points

- The California Supreme Court held that time Apple employees spent waiting for and undergoing mandatory security inspections is compensable.
- The decision rejects the holding by some lower courts that if employees could “freely avoid” the inspections by choosing not to bring a bag or an Apple product to work with them, they were not entitled to compensation.
- The Court explained that in determining whether a task is compensable, courts should consider primarily whether the employer made the activity mandatory, but also factors such as the location of the activity, the degree of the employer’s control, whether the activity primarily benefits the employee or employer and whether the activity is enforced through discipline.

On February 13, 2020, the California Supreme Court issued its decision in *Frlekin v. Apple Inc.*, which considered whether time employees spent waiting for and undergoing mandatory security inspections at Apple retail stores was compensable as “hours worked” within the meaning of the Industrial Welfare Commission (IWC) wage orders. The Court held that it is.

The lawsuit concerned a written policy requiring Apple retail store employees to undergo exit searches of bags, packages, purses, backpacks, briefcases and personal Apple technology devices, such as iPhones. The plaintiffs presented evidence that employees were required to clock out before their bags or devices were checked.

A district court certified a class of all Apple California employees who were subject to the security check policy from July 25, 2009, to present. It subsequently granted summary judgment to Apple, holding that the time spent by all class members waiting for and undergoing exit searches was not compensable. Central to the district court’s holding was its conclusion that employees were not subject to Apple’s “control” while waiting for or undergoing security checks, because employees had a free choice whether to bring a bag or an Apple device to work. Under the district court’s interpretation of the wage orders, the employees would not be subject to Apple’s

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control unless they had no plausible way to avoid the activity. Plaintiffs appealed, and the 9th Circuit certified a question regarding the district court's interpretation of the wage orders to the California Supreme Court.

The California Supreme Court rejected the district court's interpretation of the wage orders. It held that the text and history of the wage orders makes no distinction between avoidable and unavoidable tasks. Thus, it is not relevant to the "control" inquiry whether an employee could have made arrangements in advance to avoid the activity in question. The Court explained that in determining whether a task is compensable, courts should consider primarily whether the activity was mandatory, but also factors such as the location of the activity, the degree of the employer's control, whether the activity primarily benefits the employee or employer and whether the activity is enforced through disciplinary measures.

Applying these factors, the Court concluded that employees were under Apple's control during security checks because employees (1) were required to comply with the policy under threat of discipline, (2) were confined to Apple's premises during the process and (3) were compelled to perform specific tasks during the process, such as locating a manager, undoing zippers or moving items around in a bag, and providing personal Apple devices for inspection. The Court also felt that as a practical matter, it would be difficult for employees to avoid bringing bags or smartphones to work. It observed that even Apple describes a smartphone as a "practical necessit[y] of modern life" and says that "you wouldn't think about leaving home without it."

This decision is notable because by rejecting a bright-line distinction between "avoidable" and "unavoidable" tasks, the Court calls into question a defense employers have raised in many similar security check cases. It also represents a departure from federal law, because the U.S. Supreme Court has held that time spent going through security checks is not compensable under the Fair Labor Standards Act. *Integrity Staffing Solutions, Inc. v. Busk*, 572 U.S. 27, 29 (2014). In light of the California Supreme Court's decision, any practice that requires employees to submit to security checks on a regular basis would likely result in compensable time under California law. The safest course of action for California employers is to take steps to ensure that security checks are performed on the clock.

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