

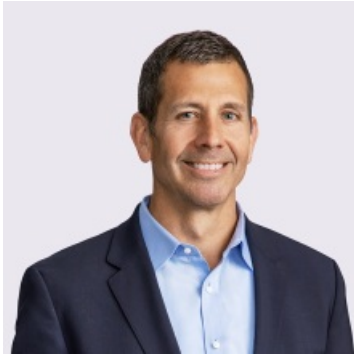
Legal Update Article

# **Washington Court of Appeals Expands Compensability of Out-of-Town Travel Time for Employees**

By Peter H. Nohle &

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Wage and Hour

Washington employers should rethink their policies on paying non-exempt employees for travel time based upon a recent appellate court ruling that travel time for out-of-town travel is considered compensable “hours worked” as a matter of Washington law. *Port of Tacoma v. Sacks*, No. 54498-9-II (Wash. Ct. App. Sept. 21, 2021).

The case involved four Washington-based hourly employees who made two trips to China to observe the manufacturing of marine cranes and one trip to Houston to attend relevant training. The Court of Appeals held the employees had to be paid for all of the time they spent traveling to, from, and within China, not just the eight hours per day the Port had negotiated with the employees’ union.

The Court of Appeals concluded that travel time for out-of-town travel is considered compensable “hours worked” as a matter of Washington law, *regardless* of whether any work is performed during the journey, whether the employer owns or controls the employee’s means of transport, or whether the employee’s travel takes place during normal work hours.

The Court embraced the policy advocated by the Washington Department of Labor & Industries, which both distinguished overnight and out-of-town travel from other types of travel and contrasted Washington law with the more employer-friendly federal law in the area. The Department’s guidance for its investigators states:

Washington law is more favorable to employees than federal law. The federal Portal to Portal Act limits compensability of out-of-town travel to travel that takes place during the employee's normal work hours. The federal law also dictates that the trip to the airport or train station is considered a normal commute and is not compensable. In 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.

If a person is required to travel to a training seminar in another city, the time from when the employee leaves their home until they arrive at their hotel in the other city is all compensable. Likewise, the time from when the employee leaves the hotel (or training facility) in the remote city, until they arrive back at their home, is also compensable. If, on the other hand, the employee is required to report to work before they travel out of town, then the drive to work and home from work at the end of the travel is considered normal commute time and is not compensable.

The *Port of Tacoma* decision highlights the need for employers to carefully draft and review their travel time policies for hourly employees based in the State of Washington. The decision also drives home the point that nationwide policies modeled on federal law are riddled with the potential for exposure given the marked differences between federal and state law in the area of out-of-town travel.

Please contact a Jackson Lewis attorney with any questions related to this case or workplace policies.

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