

Paying Employees For Travel Time

Working Together

05.01.2014

Both the state and federal wage and hour laws have provisions addressing the question of when time spent traveling by a non-exempt employee is compensable. A new decision of the Connecticut Supreme Court in the case of *Sarrazin v. Coastal, Inc.*, decided on April 29, 2014, addresses various travel time issues.

There are generally three types of travel contemplated by both federal and state wage/hour regulations:

- An employee's regular commute to and from work, including when an employee makes a stop during the commute on behalf of the employer's business;
- Travel during the regular work day;
- Commuting to work sites that are beyond the employee's usual place of performance of his principal activities.

The Supreme Court began by reiterating the principle that the employee has the benefit of either state or federal overtime laws and related travel time regulations, depending upon which is more generous to the employee.

The Court next decided that for travel time the federal law, embodied in the Portal-to-Portal Act, was considered more generous than the state regulations. (The relevant section of the Portal-to-Portal Act is 29 USC 254(a); the relevant section of the state regulations is RSA 31-60-10.)

Ordinary commuting time from home to work is not considered to be compensable travel time. This is so even if an employee is given the use of an employer vehicle, and even if the employer vehicle also transports some of the employer's materials (in the *Sarrazin v. Coastal, Inc.* case, plumbing tools and supplies), as long as using the vehicle is voluntary, and transporting its contents is simply incidental to the use of the vehicle for commuting to and from work. Mr. Sarrazin had been given the use of a pickup truck, and wanted to be paid for the time spent driving from his home to various work sites at which his employer was performing plumbing/contracting services. The Supreme Court held that under the Portal-to-Portal Act this was still ordinary commuting time, and not compensable travel time.

The Court acknowledged that if Mr. Sarrazin had been required to travel from one work site to another during his regular work day, the travel time would be compensable. Also, any stops on his way to or from work on his employer's behalf, such as stopping at their warehouse to load extra materials on the truck, would create compensable time.

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Mr. Sarrazin also argued that he should be compensated because the length of his commute varied, depending upon the location of the construction site at which he was performing his duties. However, the Court determined that in this particular business, the construction sites were the actual place of performance of his principal activities, and so the drive time was still his commute and not compensable. (Under other regulations, if an employee has a regular place of business but is asked on a particular day to travel directly from home to another site that is further away, compensable time starts at the point at which the employee passes the length of time of his ordinary commute, and is then continuing travel for the benefit of his employer.)

With a nod to the 21st century, the Court opined in a footnote that, if an employee is performing work, which by coincidence occurs during his regular commute, he would then be on compensable time. The example given by the Court was of an employer telephoning an employee during the employee's regular commute to work and engaging the employee in a discussion concerning work-related issues (presumably on a hands-free cellphone).

Posted in CT Supreme Court