



STOKES WAGNER

ATTORNEYS AT LAW

ATLANTA • ITHACA • LOS ANGELES • PITTSBURGH • SAN DIEGO • SAN FRANCISCO

California Supreme Court Rules in Favor of Compensation During Mandatory Employee Exit Searches

On February 13, 2020, the California Supreme Court issued its opinion in *Frlekin v. Apple, Inc.*, holding that the time employees spend waiting for their bags and other personal belongings to be screened at the end of a workday is compensable.

The case centers on Apple's policy that requires workers in its California retail stores to go through mandatory exit searches of any bags or personal devices to deter theft from the store. These searches last anywhere from a few minutes to 45 minutes. The main issue in the high court's ruling centered on whether the waiting time Apple employees spent undergoing mandatory security checks falls within Wage Order 7-2011 of the California Industrial Welfare Commission. Wage Order 7 requires a minimum wage for all "hours worked," and defines "hours worked" as time spent under an employer's control during which they are "suffered or permitted" to work. The Supreme Court found that Apple employees were effectively under Apple's control when they went through mandatory exit searches.

The Apple employees initially filed suit in 2013, seeking payment for about 90 minutes of unpaid work a week spent going through the exit searches. The trial court found in favor of Apple in that the time was not compensable on a motion for summary judgment. The workers appealed to the Ninth Circuit, and the appellate court asked the California Supreme Court to find the distinction between "hours worked" as defined in Wage Order 7 and unpaid mandatory security checks like Apple's.

In its arguments, Apple relied on the Supreme Court's 2000 ruling in *Morillion v. Royal Packing Co.* that found time spent traveling on buses required by the employer was compensable. The Court noted that *Morillion* addressed "compulsory employer-provided transportation to and from work." Based on this, the Court rejected Apple's argument that any employer-controlled activity must be unavoidably required to count as "hours

worked.” The Court further denied Apple’s argument that workers could choose not to bring a bag to work and thereby avoid the time spent to get screened.

Lastly, the Court said its ruling could be applied retroactively and not prospectively. Therefore, employers should check their current policies and procedures to make sure they are compliant with the Court’s latest interpretation of the IWC wage orders.