

CALIFORNIA COURT HOLDS EMPLOYERS MAY NEED TO PAY FOR TRAVEL TIME TO AND FROM

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A California court recently provided guidance on the issue of whether an employer is required to pay for the time and expense of an employee commuting to and from home to the first and from the last worksite each day. Normally, an employee's regular commute is not considered hours worked and is not subject to mileage expense reimbursement. A "regular commute" may be from home to a fixed location or to different job sites within the same commuting range. However, until the *Oliver et al. v. Konica Minolta Business Solutions, USA* decision of June this year, no California appellate court had ever addressed the issue of whether that regular commute to/from home could be converted to compensable time.

In *Oliver*, service technicians were using their personal vehicles to travel to customer locations. Konica Minolta already compensated the service technicians for their time and mileage in between customer sites but did not do so for travel to and from the technician's homes. The employees argued, however, that they were also owed compensation and mileage reimbursement for their regular commute travel between home and the first customer site and from the last customer site back to home. The crux of their argument rested on Konica Minolta's "control" over their regular commutes. They argued that carrying Konica Minolta's supplies and tools in their personal vehicles amounted to a sufficient level of "control" over their regular commute time to convert the time into compensable hours worked and made the commute travel subject to mileage reimbursement.

On appeal, the court held that the commute time might be compensable and subject to mileage reimbursement depending on the facts surrounding employees' transportation of the employer's supplies and tools. Konica Minolta demonstrated that employees had the option to leave their supplies and tools at specified field locations and were not required to bring them home after work. The court held that if carrying the supplies and tools was in fact optional, then the commute to and from home was not compensable or reimbursable.

The court went further, adding that even if employees were required to bring the supplies and tools to and from home, their commutes still would not be compensable or reimbursable as long as employees were not prevented from using the commute time for their personal pursuits (e.g., running errands, dropping off children, etc.). On this point, however, the court observed that the employees had presented evidence of wide variations in how many supplies and tools they carried and how much space was required for these supplies and tools in their differently-sized personal vehicles. Some employees claimed that the supplies and tools took up all space for passengers, preventing them from using their car for most personal pursuits, while other employees conceded that the supplies and tools only consumed a small amount of space. Because of the wide variation on these facts, the *Oliver* court held that the issue of employer “control” over employees’ commutes was not appropriate for summary judgment and that the individualized questions of fact on the issue precluded class certification.

Although the Court of Appeal did not set a bright-line rule for determining when a commute to and from home must be compensable, it did provide a framework for assessing when employees are subject to a sufficient level of employer control to subject the commutes to compensation and reimbursement requirements. If employees are restricted to the extent that they cannot use their commute time for personal pursuits (e.g., company equipment occupies most of the vehicle’s space or the employee is not allowed to take passengers along the way to the first jobsite or from the last jobsite), then the commute time is probably compensable work hours and the mileage for that commute must be reimbursed. On the other hand, if they are not restricted from most personal pursuits (e.g., making stops along the way or carrying passengers), then the commute is probably not compensable or reimbursable. In light of the Court of Appeals guidance in *Oliver v. Konica Minolta*, employers should review and possibly revise their compensation and reimbursement policies for employees’ regular commutes to and from home.

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