



The Brink's Job – Washington's Supreme Court Rules that Employees are Entitled to Drive Time Pay for Trips to and from Home in Company Vehicle

Consider the plight of the Brink's Home Security Company. Brink's employs technicians who install home security systems. Traditionally, the technicians would commute to the company's office in Kent from their homes, pick up a Brink's truck and then travel from one customer's home to another. At the end of the day, the technicians would return the truck to Kent and commute home. Brink's came up with an alternative choice for its technicians that no doubt seemed like a great idea at the time. Technicians would be given the option of continuing to pick up their Brink's truck at the office or the technicians could drive their Brink's truck home and then drive directly to the first jobsite the next day, which would eliminate the commute to Kent. Brink's didn't pay for commuting time, of course, and so they also didn't pay for their technicians to drive to the first job site of the day unless the drive time exceeded 45 minutes from the technician's home. So, of course, the moral should be that Brink's was rewarded for its innovative alternative, which reduced commuting time for its employees, reduced greenhouse gas emissions and cut congestion on the roads, right? Wrong! Instead, technicians filed a class action lawsuit alleging that Brink's violated the Washington Minimum Wage Act by failing to compensate technicians for their drive time.

Late last week, the Washington Supreme Court (7-2) upheld a judgment in favor of the technicians, awarding them back pay, prejudgment interest, post-judgment interest, attorneys fees and costs. Here's why: Washington's Minimum Wage Act (WMWA) provides that employees are entitled to compensation for regular and overtime "hours worked." The WMWA does not define "hours worked," but a Washington Administrative Code regulation defines the term as follows: "Hours worked shall be considered to mean all hours during which the employee is authorized or required by the employer to be on duty on the employer's premises or at a prescribed work place." The Court examined whether the technicians were: 1) on duty; and 2) on the employer's premises or at a prescribed work place.

1. Were the Technicians "On Duty"?

The Court concluded that the technicians were on duty because Brink's policy strictly controlled the technician's use of the company's trucks. Among other things, the Court observed that Brink's said the company's trucks were for "company business only" and that technicians could not carry passengers, engage in personal activities or run errands or shop. The Court also found it significant that technicians could receive jobsite assignments at home via voice-mail or "handheld computer." The Court reasoned that the technicians were on duty because "Brink's strictly control[led] the drive time, prevent[ing] technicians from using trucks for personal business, and requir[ing] technicians to remain available to assist at other jobsites while en route to and from their homes."

2. Was the Company Vehicle a "Prescribed Workplace"

Next, the Court held that the Brink's truck was a prescribed workplace because the nature of Brink's business required technicians to drive a company vehicle to reach customer's homes and carry tools and equipment. In addition,

technicians also used the trucks to complete work-related paperwork. Finally, the Court found it important that employees were required to keep the vehicles clean and organized.

What Does this Mean to You?

The Brink's case does not change the basic principle that commuting to and from an office is not considered "hours worked" provided that the commuting employee does not perform work during the commute.

If your company has any company vehicles and if your company allows (or requires) nonexempt employees to drive a company vehicle home and then drive to a work site (perhaps even including the main office, as the dissent points out) at the beginning of the next day, you are likely required to pay the employee for the entire trip from the moment the employee enters the vehicle. We strongly recommend that you consult with counsel if you find yourself in this position. The Court's holding that a company vehicle can be a prescribed workplace may have other ramifications under workers' compensation laws and safety & health laws.

If your company does not have company vehicles, but your supervisors direct their employees to go from their homes to a location different from the company's office or the employee's typical place of work, you should also check with counsel to determine if your practices comply with Washington law. If your company places any restrictions or requirements on the employee's commute or if your company issues directives or instructions during the commute, this also might be cause for concern. The Brink's case demonstrates that an employer's relying on a good motive (reducing commute time for employees, reducing road congestion, etc.) does not help defeat a claim for failure to pay wages owed for hours worked.

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