

# EMPLOYMENT LAW UPDATE

*Relationship-Driven Results*

*April 2024*

## **JUDICIAL UPDATE**

### **California**

#### **California Supreme Court Rules on Compensable Work Hours**

In *Huerta v. CSI Electrical Contractors*, the California Supreme Court issued a decision further expanding the scope of what constitutes compensable time for California employees. *Huerta* considers if construction workers covered by Wage Order 16 must be paid for time spent driving in their personal vehicles between a security gate and the worksite at the beginning of the work day, time waiting for a vehicle inspection when exiting through the security gate at the end of the work day, and time during on-premises meal breaks that are otherwise covered by the collective bargaining agreement meal break exemption. Expanding on prior decisions in *Frlekin v. Apple Inc.* (2020) 8 Cal.5th 1038 (time spent waiting to complete bag check compensable) and *Troester v. Starbucks Corp.* (2018) 5 Cal.5th 829 (rejecting application of de minimis rule), in *Huerta*, the California Supreme Court ruled that employees must be paid for this time.

The Court concluded that time spent on vehicle inspections was primarily for the employer's benefit, and that employees were under the employer's control during the inspection. As to the travel time, Wage Order 16 provides that "travel that occurs after the first location where the employee's presence is required by the employer shall be compensated at the employee's regular rate of pay . . ." The Court held that this provision applies when the employee's presence at a location "is required for an employment-related reason other than the practical necessity of reaching the worksite." For travel time of this nature to be compensable (in contrast to commute time), the Court concluded the employer must require the employee's presence at the initial location and that the employee's presence was required for an employment-related reason other than accessing the worksite.

Conversely, the Court held that the travel time did not constitute "hours worked" under the Wage Order definition because of the employer's lack of control over employees while driving. Although the time was compensable as "travel time" under a provision in Wage Order 16, the Court's distinction between compensable "travel time" and "hours worked" could be significant for employees pursuant to other Wage Orders which do not include the travel time provision.

Finally, even though employees were exempt from the meal break rules under the collective bargaining agreement exemption in Labor Code section 512(e) and (f) and the applicable Wage Order, the Court held that time during meal breaks is compensable if the employees cannot leave the worksite during breaks and are subject to the employer's control.

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# LEGISLATIVE/ADMINISTRATIVE UPDATE

## California

### California's Pay Reporting Deadline is May 8, 2024

California's pay data reporting deadline is May 8, 2024. There are enforcement mechanisms for employers who fail to comply with the pay data reporting requirements. Specifically, the CRD has the authority to seek:

*Civil Penalties:* Employers who fail to file a required report can be assessed monetary penalties of \$100 per employee. The penalties increase to \$200 per employee for a subsequent failure to file a required report. Penalties may also be assessed against a labor contractor for failing to timely provide pay data necessary to complete the required filing.

*An Order to File:* The CRD may seek an order requiring an employer to file a required pay data report; and

*Recovery of Costs:* The CRD may recover its costs in any enforcement action.

Moreover, the CRD issued recent changes requiring reporting on remote workers and labor contractor demographic data that were not applicable last year. For the upcoming reporting period, both payroll and labor contractor employee reports must include information regarding the number of employees per employee group who worked remotely. Specifically, the data templates ask for:

the number of employees who do not work remotely;  
the number of remote employees located within California; and  
the number of remote employees located outside of California.

The CRD's Frequently Asked Questions define a "remote worker" as "a payroll or labor contractor employee who is entirely remote, teleworking, or home-based, and has no expectation to regularly report in person to a physical establishment to perform work duties." The FAQs further elucidate that "employees in hybrid roles or (partial) teleworking arrangements expected to appear in person to perform work at a particular establishment for any portion of time during the Snapshot Period would not be considered remote workers for pay data reporting purposes." Therefore, the key consideration for a remote worker is the employee's status and work location during the Snapshot Period (i.e. a single pay period between October 1, 2023 and December 31, 2023).

In addition, labor contractor demographic data is required this reporting period. Last year, the CRD permitted using "unknown" for race, ethnicity, or sex of labor contractor employees. Importantly, "unknown" is no longer accepted. As a result, demographic data is now required for labor contractor employees. The CRD provides options for collecting this information, with a preference toward voluntary self-identification. If a worker declines to provide the information, employers must use one of three other options provided by the CRD: (1) current employment records, (2) other reliable records or information, or (3) observer perception. The CRD explicitly acknowledges the risk of inaccurate data using observer perception. The CRD instructs that observer perception should be a last resort.

*This is Pettit Kohn Ingrassia Lutz & Dolin PC's employment update publication. If you would like more information regarding our firm, please contact Tom Ingrassia, Jennifer Lutz, Ryan Nell, Shamon Finley, Christine Dixon, Jessica O'Malley, Nicole Allen, Haley Murphy, John Solis, Gabriella Kelly, Kelsey Landon, Nia Perkins, Pouch Liang, Ethan Anderson, Amer Azizi or Michelle Perez-Yanez at (858) 755-8500; or Brett Greenberg, Greg Feldman, Lisa Mallinson, Alysha Zapata, Arsalan AlNasir, Andres Uriarte, or Kimberly Horne at (310) 649-5772.*

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