STATE OF CALIFORNIA GRAY DAVIS, Governor

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENT
LEGAL SECTION
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102
(5) 703-4863

LES E. LOCKER, *Chief Counsel*

January 12, 2001

Patricia M. Gates
Van Bourg, Weinberg, Roger & Rosenfeld
180 Grand Avenue, Suite 1400
Oakland, CA 94612

Re: Whether Meal Periods During Which Employees Are Restricted to their Employer's Premises Constitute Hours Worked

Dear Ms. Gates:

This is in response to your letter of November 22, 2000, in which you state that an employer, Chevron Marketing, is requiring its employees to remain on its premises during the employees' lunch period, and that these employees are not being paid for the lunch periods in which they are restricted to the employer's premises. You ask whether this employment practice complies with California law. The answer is no; the practice is unlawful, that any time during which an employee is prohibited from leaving his or her employer's premises constitutes "hours worked" under California law, and that such employees are entitled to compensation for those hours worked.

Under all of the Industrial Welfare Commission ("IWC") orders, every employer is required to pay each employee no less than the applicable minimum wage for all hours worked. (See, *e.g.*, IWC Order 1-2000, subd. 4(B) [Cal. Code Regs., tit. 8, § 11010, subd. 4(B)].) The term "hours worked" is defined in each IWC order as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." (IWC Order 1-2000, subd. 2(G).)[1]

---

[1] The definition of "hours worked" in two wage orders, Orders 4-2000 and 5-2000, contains a special provision limited to the "health care industry." Those orders provide that "within the health care industry, the term 'hours worked' means the time during which an employee is suffered or permitted to work for the employer, whether or not required to do so, as interpreted in accordance with the provisions of the Fair Labor Standards Act." (IWC Order 4-2000, subd. 2(L), Order 5-2000, subd. 2(K).) This special definition is less protective than the general definition of "hours worked", and as a result, those health care industry employees who fall within this special definition are subject to 29 CFR §785.19(b), which provides that an employee need not be compensated for a meal

Bono Enterprises, Inc. v. Bradshaw (1995) 32 Cal.App.4th 968, is precisely on point as to your inquiry. There, employees at a manufacturing plant were required to remain on the premises during their 30 minute lunch break, during which time they were relieved of all work duties and permitted to eat or relax at the employer's on-site cafeteria. The court of appeal upheld the Labor Commissioner's interpretation of IWC Order 1-89 (the predecessor to Order 1-2000), that employees were entitled to compensation for any such period during which they were restricted to the employer's premises. The Court explained:

> "When an employer directs, commands, or restrains an employee from leaving the work place during his or her lunch hour and thus prevents the employee from using the time effectively for his or her own purposes, that employee remains subject to the employer's control. According to IWC Order No. 1-89, the employee must be paid." *Bono Enterprises, supra*, 32 Cal.App.4th at 977.

The *Bono* Court's interpretation of "hours worked" was expressly approved by the California Supreme Court in *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575 [holding that agricultural employees were subject to employer control during time spent riding to and from fields when required to ride in employer provided buses, and thus, that such time was compensable under the applicable IWC Order]. The Supreme Court held:

> "[T]he two phrases -- "time during which an employee is subject to the control of an employer" and "time the employee is suffered or permitted to work, whether or not required to do so" -- can also be interpreted as independent factors, each of which defines whether certain time spent is compensable as "hours worked." Thus, an employee who is subject to an employer's control does not have to be working during that time to be compensated under Wage Order 14-80. (See *Bono Enterprises, Inc. v. Bradshaw* (1995) 32 Cal.App.4th 968, 974-975 [interpreting the common meaning of "hours worked" in former IWC Wage Order 1-89], disapproved on

---

period so long as the employee is completely freed from duties during the meal period, even if the employee is not permitted to leave the employer's premises. For the reasons discussed herein, this federal regulation is not consistent with the general definition of "hours worked" found in each of the IWC wage orders, and thus, the general definition operates to give California workers (except for those covered by the special health care industry provision in Orders 4 and 5) greater protection than they would have under federal law. Employees covered by the special health care industry provision are limited to "employees within the health care industry," within the meaning of Order 4-2000, subd. 2(H) and Order 5-2000, subd. 2(G), employed in the "healthcare industry" within the meaning of Order 4-2000, subd. 2(K) and Order 5-2000, subd. 2(J).

other grounds in *Tidewater, supra,* 14 Cal.4th at pp. 573-574 . . . .)" *Morillion, supra,* 22 Cal.4th at 582.

In dismissing Royal Packing's contention that its farm workers were not under its control during the required bus ride because they were free to read a newspaper, or engage in other personal activities, the Supreme Court observed, "Permitting plaintiffs to engage in limited activities such as reading or sleeping on the bus does not allow them to use 'the time effectively for [their] own purposes.' (*Bono, supra,* 32 Cal.App.4th at p. 975.)" *Morillion, supra,* 22 Cal.4th at 586.

Thus, employees who were not paid for meal periods during which they were prohibited from leaving the employer's premises, notwithstanding the fact that they were relieved from all duty during those meal periods, are entitled to compensation for their unpaid meal periods. Such claims can be pursued through the Labor Commissioner or by filing a court action. These hours must be paid at no less than the minimum wage, and if the employee was working under an agreement that provided for a wage that is higher than the minimum wage, that contract rate is the rate that must be paid. And of course, an employer and employee can agree -- *prior* to the performance of the work -- to compensate "non-productive" time at a lower rate than "productive" time, provided that this lower rate is not less than the minimum hourly wage.

Thank you for your interest in California wage and hour law. Feel free to contact our office with any other questions.

Sincerely,

Miles E. Locker
Chief Counsel

cc: Arthur Lujan
Tom Grogan
Roger Miller
Greg Rupp
Nance Steffen