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ANNE STEVASON, *Acting Chief Counsel*

February 21, 2002

James S. Blythe
4744 Ben Avenue, No. 3
Valley Village, CA 91607-3957

Re: Whether Time Spent Traveling on an Out-of-Town Business Trip Constitutes "Hours Worked"

Dear Mr. Blythe:

This is in response to your letter of June 16, 2001, in which you inquired as to whether you are entitled to be paid for time spent traveling to and from an out-of-town, overnight business trip in connection with a training class that your employer required you to attend. The facts that you presented are as follows: You are a non-exempt employee, you work in California, and the training class was in San Antonio, Texas. The classes were held during normal work hours on Monday and Tuesday. All of the travel took place outside your normal work hours of Monday to Friday, 9:00am to 5:30pm. You traveled from California to Texas on the preceding Saturday, from 11:15pm to 6:30pm PDT, you spent Sunday sightseeing in San Antonio, and you returned from Texas to California at the conclusion of the training on Tuesday evening, from 6:00pm to 1:00am (Wednesday morning) CDT. On the trip to Texas, you spent a half hour eating lunch, and on the return trip you spent a half hour eating dinner. Your travel plans had been approved by your supervisor.

You state that you expected to be paid for the time spent traveling outside your normal work hours, less the meal time while traveling. Specifically, you expected to be paid 6.75 hours for your travel on Saturday, and 6.5 hours for your travel on Tuesday evening. However, after you returned from this trip, your employer informed you that none of your travel time to and from San Antonio would be paid, pursuant to your company's staff manual which provides, "Time spent traveling as a passenger on a plane, train, bus, car, or taxicab to a business destination outside your normal business hours is not considered to be paid time." You seek an opinion as to whether this company policy conforms with California law. As discussed below, this policy violates California law in that the time spent traveling to and

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from a business meeting or other event where attendance is required by the employer constitutes hours worked, whether or not the travel takes place during regular work hours, and whether or not the business trip includes an overnight stay.

Initially, we note that the question you presented would be answered differently under federal law. Under federal regulations adopted by the Secretary of Labor pursuant to authority granted by the Fair Labor Standards Act (FLSA), "travel that keeps an employee away from home overnight . . . is clearly worktime when it cuts across the employee's workday. . . . The time is not only hours worked on regular working days during normal working hours but also during the corresponding hours on non-working days. Thus, if an employee regularly works from 9am to 5pm from Monday through Friday, the travel time during these hours is worktime on Saturday and Sunday as well as on the other days. . . . As an enforcement policy the [U.S. Department of Labor] will not consider as worktime that time spent in travel away from home outside of regular working hours as a passenger on an airplane, train, boat, bus or automobile." (29 CFR §785.39) However, under the federal regulations, "any work which an employee is required to perform while traveling must, of course, be counted as hours worked. An employee who drives a truck, bus, automobile, boat or airplane" in contrast to a passenger, "is working while riding." (29 CFR §785.41) Also, the federal regulations provide that travel outside of normal work hours on a special one day assignment to another city must be counted as worktime. (29 CFR §785.37) Thus, under these federal regulations, some, but not all, of the travel time in connection with your trip to San Antonio would constitute compensable worktime.

State wage and hour law differs in many respects from federal law, including in the extent to which various activities are treated as "hours worked" under state law, or as compensable worktime under federal law. The federal FLSA provides the floor below which no employer may go, but when California law provides greater protections to employees, the more protective provisions of California law will apply. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575; See also *Ramirez v. Yosemite Water Co.* (1999) 20 Cal.4th 785. Every one of the industrial and occupational orders adopted by the California Industrial Welfare Commission (IWC) defines "hours worked" to include "the time during which an employee is subject to the control of an employer" *and* "all the time the employee is suffered or permitted to work, whether or not required to do so." As the California Supreme Court held in *Morillion*, compulsory travel time constitutes time during which the employee is "subject to the control of an employer" and thus constitutes compensable "hours worked," whether or not the employees are free to read a newspaper or engage in other personal pursuits while riding in a

bus as passengers. And as the Supreme Court observed in both *Ramirez* and *Morillion*, federal regulations which have no counterpart in state law, and which would have the effect of undercutting protections provided by state law to employees, do not apply and will not be used to interpret state law.

The state law definition of "hours worked" does not distinguish between hours worked during "normal" working hours or hours worked outside "normal" working hours, nor does it distinguish between hours worked in connection with an overnight out-of-town assignment or hours worked in connection with a one-day out-of-town assignment. These distinctions, and the treatment of some of this time as noncompensable, are purely creatures of the federal regulations, and are inconsistent with state law.

Under state law, if an employer requires an employee to attend an out-of-town business meeting, training session, or any other event, the employer cannot disclaim an obligation to pay for the employee's time in getting to and from the location of that event. Time spent driving, or as a passenger on an airplane, train, bus, taxi cab or car, or other mode of transport, in traveling to and from this out-of-town event, and time spent waiting to purchase a ticket, check baggage, or get on board, is, under such circumstances, time spent carrying out the employer's directives, and thus, can only be characterized as time in which the employee is subject to the employer's control. Such compelled travel time therefore constitutes compensable "hours worked." On the other hand, time spent taking a break from travel in order to eat a meal, sleep, or engage in purely personal pursuits not connected with traveling or making necessary travel connections (such as, for example, spending an extra day in a city before the start or following the conclusion of a conference in order to sightsee), is not compensable.

It should be noted that our analysis of California law is consistent with the long-standing policies of the Division of Labor Standards Enforcement. In February 21, 1984, then State Labor Commissioner C. Robert Simpson, Jr. reasoned that "the Industrial Welfare Commission orders require that time spent traveling during either regular working hours or in addition to the regular working hours, if such travel is done pursuant to the employer's instructions, is considered worktime," and "is considered hours worked even if no productive work is performed." (DLSE Interpretive Bulletin No. 84-6-Rev.)

The fact that your company policy purports to treat certain time spent traveling to a required out-of-town meeting or class as unpaid time cannot, of course, override the requirements of state law. If time constitutes "hours worked" under state law, that time must be paid. The rate at which it must be paid

depends upon the nature of your compensation agreement. If your employer has agreed to pay you a fixed hourly rate of pay for any work performed, then travel time must be paid at that regular hourly rate, or, if applicable, the required overtime rate based upon that regular rate. Likewise, if you are a non-exempt salaried employee, state law expressly provides that your salary only compensates you for non-overtime hours, i.e, for hours worked up to 8 in a day and up to 40 in a week. Hours worked in excess of 8 in a day or 40 in a week must be compensated at the applicable overtime rate, which must be computed by converting the weekly salary to an hourly rate, which is defined as 1/40th of the weekly salary. (See Labor Code §515)

If you are an hourly paid employee, your employer can establish a separate rate for travel *before the work is performed*, provided that no rate of pay can fall below the state minimum wage. Under state law, the obligation to pay no less than the minimum wage attaches to each separate hour, or part of each hour worked.

Also, all necessary expenses incurred in connection with employer required travel must be reimbursed to the employee, pursuant to Labor Code §2802, which provides: "An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer. . . ."

Thank you for your patience in awaiting a response to your letter, and for your interest in California wage and hour law. Feel free to contact us with any other questions.

Sincerely,

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Acting Chief Counsel

AS/mel
cc: Art Lujan
Tom Grogan
Assistant Chiefs
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Legal Sections