STATE OF CALIFORNIA
GEORGE DEUKMEJIAN, Governor

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENT
GOLDEN GATE AVENUE
FRANCISCO, CALIFORNIA 94102

Legal Section

ADDRESS REPLY TO:
P O BOX 603
San Francisco CA 94102

IN REPLY REFER TO:

May 16, 1988

Cynthia M. Walker
Jackson, Lewis, Schnitzler & Krupman
1925 Century Park East, 11th Floor
Los Angeles, CA 90067

Re: Compensable Time

Dear Ms. Walker:

The Labor Commissioner has asked me to respond to your letter of April 26, 1988, wherein you ask whether the hotel chain you represent which requires employees to wear company uniforms and further requires the employee to change into and out of the uniform when coming to and leaving work must compensate the employee for the period of time involved in changing clothes.

You suggest that the case of Lindow v. United States 738 F.2d 1057 (9th Cir., 1984) supports your position that your client would not have to pay for what you refer to as this de minimis time.

The federal cases construing the Fair Labor Standards Act may sometimes provide guidance to state courts in interpreting the IWC Orders (Alcala v. Western AG Enterprises (1986) 182 Cal.App.3d 546) and Lindow, supra, would seem to be one of those cases. However, my reading of Lindow does not seem to coincide with your interpretation.

The Lindow court was faced with a fact situation wherein the lower court had determined that the employer, the U.S. Corp of Engineers, neither encouraged nor countenanced the employee's early arrival. While the court found that the employer may still be liable for the time it has suffered or permitted the employee to work, the facts in that case established that the work performed by the employees did not have to be performed before or after the regular work hours but could just as well have been performed after the start of the shift. Such does not seem to be the situation in the scenario you describe in your letter.

The court in Lindow did not endorse the language which you quote regarding ten minutes being de minimis; the court merely stated that other courts have made such determinations.

The court specifically states that there is "no precise amount of time that may be denied compensation as de minimis." The Lindow court cited the reasoning of the Supreme Court in Anderson v. Mt. Clemens Pottery 66 S.Ct. 1187, that compensation for "a few seconds or minutes" is de minimis "in light of the realities of the industrial world."

The court in Lindow summarized the facts it would look at in determining whether the time was de minimis: (1) the practical administrative difficulty of recording the additional time; (2) the aggregate amount of compensable time; and (3) the regularity of the additional work.

While the Division has never defined a test to determine the time which it would consider de minimis, and there do not appear to be any California cases on point, the Division would adopt the test of the Lindow court with respect to de minimis time for purposes of compensation unless the parties to the employment have adopted another test which is at least as advantageous to the employee as that set out in Lindow. Each of the determinations will have to be made on a case-by-case basis.

Your letter does not contain enough facts to determine whether the time your client requires the employees to spend changing clothes would be compensable. It would appear, however, that the employer requires the extra time regularly and there should no difficulty in recording the additional time.

Obviously, if an employee is required to spend an additional ten to twelve minutes per day changing clothes, that would result in an additional 40 minutes to one hour per week. As you can see, the aggregate amount of compensable time is substantial.

If you have any further questions regarding this matter please address them to the undersigned.

Yours truly,

H. Thomas Cadell Jr.

H. THOMAS CADELL, JR.
Chief Counsel

c.c. Lloyd W. Aubry, Jr.
James Curry
Simon Reyes
Regional Managers

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