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Is Time for Bag Searches Compensable in California?

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In the new year the California Supreme Court will address the question of whether employee bag searches should be compensated under [California law](#). The question recently certified by the Ninth Circuit Court of Appeals to the California Supreme Court in [Frlekin v. Apple, Inc.](#) states:

“Is time spent on the employer’s premises waiting for, and undergoing, required exit searches of packages or bags voluntarily brought to work purely for personal convenience by employees compensable as “hours worked” within the meaning of California Industrial Welfare Commission [Wage Order No. 7](#)?”

Not all employers have bag inspection policies. However, those that do retain the right to inspect large purses, backpacks, and other personal bags when an employee leaves the premises for a meal or rest break. In some cases, there might be no wait and a search could take 30 seconds; in others, it might last several minutes, reducing the break to a much shorter duration than the law requires. For example, a 30-minute meal period could be cut in half and a 10-minute rest break could be effectively eliminated. This can deter employees from leaving to purchase and enjoy a meal or otherwise spend their breaks as they wish. California law requires employees to be fully relieved of their duties on all breaks with few exceptions.

Bag inspection policies exist to enhance loss prevention. Despite employers’ legitimate concerns about employee theft, there are less restrictive alternatives that better protect employees’ rights. For example, employers can arrange for employees to clock out *after* they are searched instead of *before* they wait for and undergo searches. If the California Supreme Court answers the question above in the affirmative, it will send a strong message that employers can no longer get something for free—that is, they can no longer expect employees to do something off the clock for the sole benefit of the employer.

Even if bag searches do infringe on workers’ rights relating to meal and rest periods in California, employees must still overcome the hurdle of the *de minimis* doctrine. This federal doctrine holds that, where business considerations make it impractical to precisely record time, such “de minimis” time (e.g. a few seconds or minutes) is not compensable. Because California law is more protective of employees’ rights and specifies meal and rest period requirements, the Ninth Circuit has certified this question to the California Supreme Court in [Troester v. Starbucks Corporation](#):

“Does the federal Fair Labor Standards Act *de minimis* doctrine, as stated in *Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680, 692 (1946) and *Lindow v. United States*, 738 F.2d 1057, 1063 (9th Cir. 1984), apply to claims for unpaid wages under the California Labor Code sections 510, 1194, and 1197?”

If the Court holds that bag searches are compensable and the *de minimis* doctrine does not apply to state claims, it would be a victory for California employees. See [Apple defeats U.S. Class Action Lawsuit over bag searches](#). They would be entitled to wages for all time spent waiting for and undergoing bag inspections, both during meal and rest periods and at the end of their shifts.

About the Author: Scott Edward Cole founded the predecessor firm to Scott Cole & Associates in 1992 and has devoted himself, his team, and the firm’s resources to championing employment and consumer law issues ever since. Mr. Cole is an extremely well-respected leader in the field of employment class action litigation, has authored numerous scholarly publications and has been called upon to serve as a regular speaker at public seminars on issues surrounding employment laws and class action procedures.

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