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**NEW CALIFORNIA RULE REGARDING TRAVEL TIME
COMPENSATION FOR NON-EXEMPT EMPLOYEES
(May 1, 2002)**

Summary

Recently, the Division of Labor Standards Enforcement (the "DLSE") issued an [opinion letter](#) regarding whether time spent traveling on out-of-town business trips constitutes "hours worked," and must be paid. The DLSE concluded that whenever an employer requires a non-exempt employee to travel out-of-town, all of the time spent traveling constitutes "hours worked," and must be paid.

Details

The DLSE's letter, dated February 15, 2002, was in response to an employee's question as to whether his company had violated California law by refusing to consider "time spent traveling as a passenger on a plane, train, bus, car or taxicab to a business destination outside normal business hours." The DLSE found that the company's travel time policy violated California law. The DLSE noted that any time spent traveling out-of-town where attendance is "compelled" by the employer (e.g. to and from a business meeting or event), constitutes "hours worked." The DLSE then defined "compelled" travel time to include all of the following: (i) 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 an out-of-town event; and (ii) time spent waiting to purchase a ticket, check baggage, or to get on board.

Notably, travel time is treated differently under federal law. Under federal law, an employer is not obligated to pay for hours spent traveling outside of normal working hours (which includes "normal working hours" on non-working days). However, according to the DLSE, California law does not make a distinction based on what time the travel occurs – if the employer requires it, the time must be paid.

The DLSE did acknowledge that an employer can establish (in advance) a separate rate for travel time, provided that it does not fall below the state minimum wage.

What this means

Employers that require non-exempt employees to travel for out-of-town business should re-examine how they are compensating the employee for travel time to insure that their company policies do not violate California law. An employer can control these travel costs by (1) regulating when an employee travels to avoid excessive or unnecessary overtime; or (2) establishing a separate rate for all travel time; or (3) establishing a separate rate for all travel time that is outside of normal working hours.

If an employer has employees both in California and other states, it may want to consider establishing a separate travel time policy for its California employees since most other states follow federal law on this issue.

This E-Update was authored by [Mike Sullivan](#) and [Gwendolyn Christeson](#). If you have any questions about this E-Update, please contact Mr. Sullivan or any PPS&C attorney.

This E-Update is offered as general information to our clients and friends. The Update is not intended as legal advice applicable to any specific situation and should not be taken as such.

ANNOUNCEMENT

Rich Paul will be speaking at the SDEA 17th Annual Employment Practices Seminar The Masters of Employment Law Issues. Mr. Paul will speak on the subject of "Lying in Wait" - How to Avoid the Retaliation Trap. The registration form is attached to this e-mail.

Send comments to info@paulplevin.com. Last modified 5/1/2002