



Washington Supreme Court Rewards Employees for Driving Company Cars During Commute

by Richard H. Kaiser

A recent Washington Supreme Court decision sheds light on when employers must pay non-exempt employees who use a company vehicle for the commute between their home and a remote worksite. [Stevens v. Brinks Home Sec., Inc.](#), No. 79815-0, 2007 Wash. LEXIS 792 (October 18, 2007). Unfortunately for employers, the Court held that the commute in *Stevens* constituted "hours worked" and was thus compensable under the Washington Minimum Wage Act ("MWA").

Stevens v. Brinks: Reported Facts. *Stevens* was a class action lawsuit brought by sixty-nine installation and service technicians who installed home security systems. Brinks supplied the technicians with pickup trucks bearing the Brinks logo and configured to carry the necessary tools and equipment. For the time spent driving to the first jobsite and from the last jobsite, Brinks offered the technicians a choice between two programs.

Under the first program, the technicians could drive their personal vehicles from their homes to the Brinks office in Kent to pick up the company trucks necessary for installing the security systems. Brinks paid the technicians for the commute from the Kent office to their first job, but not for the time spent commuting between their homes and the office. The plaintiffs did not allege this practice violated the MWA.

Instead, the employees attacked the second program, even though it made for an easier morning commute to the first job site. Under this program, Brinks allowed the technicians to keep the Brinks trucks at their homes and drive them directly to and from the first and last jobsites without stopping at the Kent office. Technicians participating in this program received their daily job assignments through voice mail or handheld computers. Brinks generally compensated the technicians in this program for any drive time in excess of forty-five minutes from the technicians' homes. According to the plaintiffs, however, the entire commute time under this program was compensable under the MWA.

The Washington Minimum Wage Act: The General Framework. Under the MWA, non-exempt employees are entitled to compensation for regular hours and any overtime hours worked. The MWA does not indicate whether such hours include commute time. As with some other terms not defined in the MWA, the Department of Labor and Industries has promulgated a regulation that defines "hours worked." Under the regulation, "hours worked" means "all hours during which the employee is authorized or required ... to be on duty on the employer's premises or at a prescribed work place."

The only other Washington decision that addresses whether an employee's commute was compensable under the MWA is *Anderson v. Department of Social & Health Services*, 115 Wn. App. 452, 63 P.3d 134 (2003). There, the Washington Court of Appeals held that state employees who traveled on a state/employer-provided ferry to the McNeil Island Special Commitment Center were not entitled to compensation for their commute on the ferry. According to the *Anderson* court, the employees in that case were free to engage in personal activities while they traveled on the ferry. The appeals court also found that the ferry was not a "prescribed work place." It therefore affirmed the trial court's dismissal of the employees' lawsuit.

In contrast, in *Stevens* the Washington Supreme Court found the technician's commute constituted "hours worked" and was therefore compensable.

Why the *Stevens* Court Sided with the Employees. The *Stevens* Court analyzed whether the commute between the technicians' homes and their first and last job sites amounted to being "on duty" at a "prescribed workplace." Initially, the Court concluded the technicians were "on duty" during that commute because Brinks prevented them from using the trucks for personal business and required them to remain available to assist at other jobsites while en route to and from their homes.

The Court then addressed whether the trucks were a "prescribed workplace." In this regard, the Court found three factors relevant: (1) the technicians needed the trucks and tools within them to install the security systems and rarely went to the office; (2) Brinks policy required the technicians to complete paperwork at customers' home or in their Brinks trucks; and, perhaps most remarkably, (3) Brinks required employees to "ensure that the vehicle is kept clean, organized, safe and serviced." The Court held that these facts, viewed cumulatively, constituted sufficient evidence that the Brinks trucks were a "prescribed workplace" under the governing regulation.

Based on these conclusions, the Court ruled in favor of the technicians. It then awarded them unpaid wages for the commute time, prejudgment interest, and attorneys' fees and costs.

How Employers Should Respond to This Decision. *Stevens* creates a potential new wage obligation for employers that require, or even permit, their employees to use a company vehicle when traveling directly from home to a remote work site. The opinion does not make clear whether multiple factors are necessary to make an employer's vehicles a "prescribed workplace" during commute time, or whether a single one of the factors noted by the Court would be sufficient. Thus, the only certain way to avoid paying for commute time between home and work is to require employees to report to a central work station, pick up the company vehicle, and return it at the end of the day. If that option is not feasible, however, employers should consider adopting the following measures, which may, but will not necessarily, result in the commute time being held as non-compensable:

- Do not require employees to respond to calls or engage in other work-related activities while en route between home and their first and last work assignments.
- Do not require employees to use company vehicles as remote worksites, for example by directing them to complete paperwork in the vehicles.
- Set aside time for employees to clean and service company vehicles during paid non-commuting work time each week.

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