

Drivin & Cryin? Employees' Commute Time May Be Compensable Under California Law

A recent Ninth Circuit decision held that commuting time can be compensable under California law when the employee is restricted from engaging in personal activities. In Rutti v. Lojack Corporation, the Court denied the plaintiff compensation for commuting time spent in a company vehicle under the federal Employment Commuter Flexibility Act, but simultaneously held that the plaintiff's mandatory commute was compensable under California law.

Facts:

In Lojack, the plaintiff sought to bring a class action on behalf of all technicians employed by the defendant to install alarms in customers' cars, seeking compensation for the time spent commuting to worksites in company-owned vehicles, and for time spent on preliminary and postliminary activities performed at plaintiffs' homes.

Holding:

The district court granted summary judgment to Lojack on all counts, finding that plaintiff's commute was not compensable as a matter of law and that the preliminary and postliminary activities were not compensable because they either were not integral to the plaintiff's principal activities or consumed a *de minimis* amount of time. The Ninth Circuit affirmed the district court's denial of compensation under federal law for plaintiff's commute and preliminary activities, but vacated the judgment on plaintiff's claim for compensation of his commute under California law, and on a specific postliminary activity.

Analysis:

In distinguishing between the remedies available under federal versus state law, the Court did not find it determinative that the Lojack plaintiff was simply required to drive a company-owned vehicle to the jobsite each morning. Rather, applying California law, the court focused on the amount of time the plaintiff was subject to the employer's *control*. In this case, the plaintiff was not only required to drive the company car to and from the worksite, but he was also prohibited from conducting personal errands, taking passengers, or making any other detours while using the company vehicle. Moreover, the plaintiff was not permitted to use his cell phone while driving for anything other than answering company calls. The Court stressed that the only relevant question as to compensability under California law is whether the employee is under the control of the employer. The court went on to find that the plaintiff's mandatory travel time was "obviously under the employer's control," thus entitling him to compensation.

In contrast, applying federal law, the Lojack court found that the plaintiff's driving time, regardless of the degree of control exercised and amount of restrictions implemented by the employer, was noncompensable.

What This Means to Employers:

California employers should be wary when mandating usage of a company vehicle or otherwise implementing a company car policy. Depending on the terms, such policies might convert otherwise

noncompensable commuting time into compensable work time under California law, even where no federal cause of action exists. This is not to say that employers should eliminate the usage of company cars altogether; rather, they should focus on the restrictions they have placed on such usage. Once the employee is both required to drive a company car *and* prohibited from making any personal stops while doing so, this commuting time will likely be compensable under California law.

Please feel free to contact any attorney in [Miller & Martin's labor and employment department](#) for guidance if you have a company car policy and would like it reviewed.

The opinions expressed in this bulletin are intended for general guidance only. They are not intended as recommendations for specific situations. As always, readers should consult a qualified attorney for specific legal guidance. Should you need assistance from a Miller & Martin attorney, please call 1-800-275-7303.

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