

## CALIFORNIA SUPREME COURT RULES THAT EMPLOYEE TIME SPENT IN SECURITY LINES IS CONSIDERED HOURS WORKED

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On February 13, the California Supreme Court made its decision in *Frlekin v. Apple Inc.*, a case affecting businesses at risk of employee theft, such as retailers, jewelers, pharmacies, and tech companies. The Court expressly stated that employee time spent in post-shift mandatory security lines on the employer's property is compensable as "hours worked." The policy at issue required Apple employees to clock out before submitting to mandatory bag searches when leaving retail stores after their shifts – a process that could take as long as 20 unpaid minutes.

At the trial court level, Apple argued that employees were not entitled to compensation for this time because (i) they were no longer under the control of the company when they clocked out and (ii) the policy allowed personnel to bring bags into retail stores for their "convenience." The trial court agreed with the tech giant. Plaintiffs appealed to the Ninth Circuit, which asked the California Supreme Court to decide the following question: "Is time spent on the employer's premises waiting for, and undergoing, required exit searches of packages, bags, or personal technology devices voluntarily brought to work purely for personal convenience by employees compensable as 'hours worked'" under California Labor Law? *Frlekin v. Apple Inc.* (Cal. Feb. 13, 2020) 2020 WL 727813, at \*1

California's High Court answered in the affirmative. It reasoned that employees were subject to Apple's control because they were restricted to the employer's property and exposed to disciplinary action for violating the policy. As for the "convenience" argument, the realities of modern life include an understanding that most employees will bring bags to carry items such as food, glasses, phones, etc. Critically, employees were required to allow inspection of their smartphone devices, which almost certainly included iPhones. In public marketing statements and in briefs before the United States Supreme Court, Apple consistently stated that smartphones are an integral and necessary part of modern life. Apple's claim that employees could keep their phones off worksites was thus an unrealistic and inconsistent position.

The decision applies directly to retail companies, particularly phone and electronic distributors with similar bag search policies.

Companies with employees in California should review their current written policies and examine how they are applied in practice. Given the notoriety of the defendant in this case, the plaintiff's bar is likely to pursue class action litigation against companies who fail to adjust.

### ADDITIONAL INFORMATION

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