Frlekin v. Apple Inc.
(2020) 8 Cal.5th 1038

Where an employer requires employees to undergo mandatory exit searches of bags and technology devices brough to work purely for personal convenience, this time is compensable.

FACTS

Apple requires its retail store employees to undergo exit searches pursuant to its "Employee Package and Bag Searches" policy. Any time an employee leaves the store, they must find a manager to go through all their bags, purses, and personal Apple devises, including unzipping zippers to inner compartments. iPhones are compared to stored numbers to ensure it is the employee's phone. Employees were required to clock out and then find a manger to complete the search; a task that ranges from 5-20 minutes typically and up to 45 minutes. Non-compliance results in discipline, including termination.

Apple employees sued and the district court certified a class of all Apple California nonexempt employees who were subject to the bag-search policy from July 25, 2009, to the present. Cross-motions for summary judgment were filed and the district court granted Apple's motion and denied plaintiffs' motion. It ruled that time spent by class members is not compensable as "hours worked" because the control clause in Wage Order 7 requires proving both that the employer restrains the employee's action during the activity in question *and* the employee has no plausible way to avoid the activity.

SUPREME COURT RULING

Certified Q: 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" within the meaning of Wage Order 7? Yes.

Industrial Welfare Commission wage order No. 7-2001 (Wage Order 7) requires employers to pay their employees a minimum wage for all "hours worked." (Cal. Code Regs., tit. 8, § 11070, subd. 4(B).) "Hours worked" is defined as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." (*Id.*, § 11070, subd. 2(G).) This is liberally construed in favor of the employee. The level of the employer's control over its employees, rather than the mere fact that the employer requires the employees' activity, is determinative concerning whether an activity is compensable under the "hours worked" control clause. Here, the employer did exhibit control. Applying the additional factors under the rule, it was clear these searches are required as a practical matter, occurred at the workplace, involve a significant degree of control, are imposed primarily for Apple's benefit, and are enforced through threat of discipline. "Thus, according to the 'hours worked' control clause, plaintiffs 'must be paid.'"

Apple's argument employees could avoid the search was far-fetched. They required employees to wear Apple-branded apparel while in the store but directed them to change or cover up such attire outside the store. Moreover, the Apple CEO was quoted as saying no one would even think of leaving home without an iPhone. As the United States Supreme Court observed in *Riley v. California* (2014) 573 U.S. 373, 385; "modern cell phones … are now such a pervasive and insistent part of daily life that the proverbial visitor from Mars might conclude they were an important feature of human anatomy."

Furthermore, the decision was applied retroactively. The general rule is judicial decisions are given retroactive effect and the Court saw no reason to depart from the rule.