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## News

### Wage-Hour Developments

#### FLSA

#### Judge OKs Class Action, Finds Company Failed to Pay for Out-of-Town Travel

A New York commercial electrical construction company failed to pay regular and overtime wages to employees required to travel to out-of-town jobs and also could be liable for failing to pay employees who interrupted lunch breaks to perform work, a federal district court ruled Nov. 22 (*Mendez v. Radec Corp.*, W.D.N.Y., No. 03-6342, 11/22/05).

Refusing to decertify a Fair Labor Standards Act collective action and approving a state-law class action, Judge David G. Larimer of the U.S. District Court for the Western District of New York found that Rochester, N.Y.-based Radec Corp. failed to pay both regular pay and overtime to workers who were required to travel out-of-town for work and therefore a class action for damages was appropriate.

"Class members who traveled to such job sites during their normal working hours, whether on work days or non-work days, are entitled to compensation at the appropriate rate," Larimer said. "Since the record clearly shows that in many instances no compensation was paid for such travel time, plaintiffs are entitled to summary judgment on the issue of liability."

In addition to finding the company failed to provide straight-time pay for travel, the court also granted summary judgment for the employees on the issue of overtime pay finding the company was not paying one-and-one-half the regular pay when employees exceeded 40 hours a week during out-of-town trips.

#### Seventy-Six Employees Opt-In

Patrick Mendez, a field supervisor for Radec, filed the original lawsuit against the company, alleging he was not paid proper wages under the FLSA and the New York Labor Law. He also alleged that when he complained about the wages, he was terminated in retaliation for his complaints.

In February 2004, the federal court certified an FLSA collective action for all employees working for Radec throughout New York. The subclasses covered employees who were denied bonuses, forced to work off-the-clock, not paid for travel, and not paid overtime when travelling. After the collective action was certified, 76 individuals joined the class.

The employees then moved for summary judgment on their allegations that the company automatically took a 2.5 hour deduction from every pay period for lunch breaks, even if the breaks were interrupted. The employees also argued that they were not paid for travel time and not paid overtime when they worked 40 hours a week and had to travel in addition to their work.

### Employer Admits Not Paying

The court said Radec admitted that it did not pay employees for travel, since it considered a project site to be "home" for purposes of classifying workplaces. If an employee was assigned to work at a project site, that site became their base workplace and therefore the company only paid for travel if they went from the project site to another site.


Radec also argued that its employees did not have "regular working hours" because of the demands of their job, the court explained, and therefore it would be impossible to travel outside of "regular work hours;" thus, compensation was unnecessary.

"The proof is compelling that plaintiffs, as a group, were not paid properly for their travel time," Larimer said in granting summary judgment to the employees on the issue.

On the issue of lunch breaks, the court refused to grant summary judgment for the employees and said there were issues to be judged in terms of the frequency and types of interruptions employees experienced.

[N]ot every interruption to an employee's lunch break renders the entire break period compensable under the FLSA," Larimer said. "The question is not whether an employee did *any* work at all during his meal period, but whether that period itself is used primarily to perform activities for the employer's benefit."

The court said although there was evidence that employees spent 35 percent of their lunch breaks performing work and a few employees said that 100 percent of their breaks were used for work, there was also evidence that the company did not make automatic deductions. Those disparities, the court said, necessitated further review by the court or a jury.

David W. Robinson of Harter, Secrest & Emery in Rochester, N.Y., represented Radec. J. Nelson Thomas of Dolin, Thomas & Solomon in Rochester, N.Y., represented the employees. 

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