



Client Alerts

California Compliant: Remote Employee Files PAGA Lawsuit for Time Spent Waiting on Computer

August 13, 2024 | (Time to read: 3 minutes)

The California Labor Lab reports¹ that employees in the Golden State work remotely more often than workers in other parts of the country. In San Francisco, for example, nearly 60% of employees regularly work from home. More often than not, remote workers begin their day by turning on or “waking up” a computer. Employers must pay non-exempt workers for all time worked, of course – but that begs the question, at what moment does a remote worker’s day begin?

A San Francisco worker recently filed a lawsuit claiming that she and other remote workers should have been compensated for the time it took them to complete the steps required so that they could finally “clock in” on a computer to start their shift. The plaintiff alleges that her employer’s failure to pay employees for the time they spent “waiting” for the computer and “launching” applications violated multiple wage and hour laws. The action, which seeks civil penalties on a representative basis pursuant to the state’s Private Attorneys General Act (**PAGA**), is a red flag for California employers that employ non-exempt remote workers.

“Hours Worked” to Start a Computer, Enable/Launch Applications, and Log In

California requires employers to pay non-exempt workers (those who are overtime-eligible) for all “hours worked.” The state’s **wage orders** generally define “hours worked” 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.” Although claims for unpaid wages asserted under the federal **Fair Labor Standards Act** may be subject to a defense that the amount of uncompensated time was “*de minimis*” (essentially, so small as to be legally insignificant)², liability for violating California’s wage orders is strict – a plaintiff can prevail by proving that any time worked was not compensated.

Computers and other digital devices make remote work possible. To guard against cybersecurity risks, businesses routinely require remote workers to enable two-factor authentication and utilize VPN software before they access digital platforms for work. None of that can happen until the computer is up and running – a process that often takes between two and five minutes. If that time is considered “hours worked,” employers must compensate their non-exempt California workers for those activities.

PAGA Claims for Computer Setup and Daily Log-in Time

In her lawsuit against Foundation Partners Group LLC, plaintiff Catherine Valle alleges that she and other remote workers should have been paid for the time they spent each day completing twelve tasks that all were required before they could “clock in” to record the start of a shift. Valle claims that the “log in” procedure forced her to wait for a computer to turn on, enter her credentials multiple times, launch and enable a VPN, and navigate to the button she could click to “clock in.” The complaint is silent as to the amount of time this process required.

In the lawsuit, Valle further claims that she should have been paid for time she spent traveling to “retrieve” computer equipment from the company and “set up” the equipment at her home. She also alleges that she was routinely forced to work “off-the-clock to take and respond to communications” from managers and clients. Based on these and other allegations, Valle contends the company violated Labor Code Sections 201, 202, 203, 204, 223, 226, 226.7, 246, 510, 512, 1194, 1197, 2802, and the applicable wage order.

Valle seeks PAGA penalties for herself and an unspecified number of other non-exempt remote workers. The suit is pending in San Francisco Superior Court (case no. CGC24616764). Valle submitted her PAGA notice to the Labor and



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Workforce Development Agency on May 20, 2024, and therefore her employer will not benefit from the **PAGA Reforms** applicable to notices submitted on or after June 19th.

Takeaway for Employers

Given the potential for exposure, California employers may want to review:

1. **Time Spent Setting Up Equipment:** Identify whether non-exempt workers must spend time obtaining or setting up computer equipment at remote worksites.
2. **Time “Worked” Before Clocking-In or After Clocking-Out:** Determine if employees are performing tasks before clocking in or after clocking out, whether working on-site or remotely.
3. **Work-Related Expenses:** Evaluate if employees incur necessary work-related expenses while working remotely, such as phone and internet service costs, which may trigger reimbursement obligations under Labor Code Section 2802.

Businesses that decide to compensate non-exempt employees for time spent “off the clock” on required tasks then must evaluate how to determine the amount of “hours worked” for tasks completed before or after time recorded as worked.

Employers may also want to consider training, and periodic reminders for, supervisors, managers, and human resources personnel about the obligation to pay non-exempt employees for all time spent on work tasks, including communicating by phone or email.

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1. Ima Varghese Mac & Cristina G. Banks, *A Brief Review of the Current State of Remote Working*, California Labor Laboratory (April 8, 2024), available at <https://calaborlab.ucsf.edu/sites/g/files/tkssra7771/f/Remote%20Work%20Report.pdf> ↗
 2. The Ninth Circuit confirmed as much in a decision issued July 10th, in *Cadena v. Customer Connexx LLC* (107 F.4th 902) (“the de minimis doctrine remains applicable to workers’ claims for overtime wages under 29 U.S.C. § 207”). In that action, Plaintiff Cadena asserted that her employer violated the FLSA by not paying her for time she spent “turning on or awakening the computer, logging in to the computer ... and clicking on a link to the timekeeping system to open the program [so she could] clock in.” Although the court signaled its approval of a de minimis defense, it remanded the case for the district court to determine whether the time in question was de minimis. ↗

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