

Apple Employees Survive Summary Judgment In FLSA Bag Check Class Action

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Last week, in *Frlakin v. Apple Inc.*, the U.S. District Court for the Northern District of California denied Apple's motion for summary judgment in a Fair Labor Standards Act case filed by a class of its employees working in Apple Stores around the country. A class of current and former non-exempt specialists, managers, and Genius Bar employees claim Apple requires its hourly employees to undergo unpaid security checks each time they go off the clock for a meal break or at the end of their shifts. Because hourly employees end their shifts or take meal breaks at the same time, this security check can take up to 15 minutes each time because employees must wait in line for their opportunity to be screened. The class of employees argued that this time should be paid because it is "work." The court determined that there are genuine issues of material fact as to whether this time is considered "work" under the FLSA. Apple argued that the inspections in essence are voluntary, because employees who do not bring bags to work and do not carry Apple devices such as an iPhone are not screened, and employees who do not want to be screened can leave their devices and bags at home. However, the class of employees refuted Apple's claim, as an employee claimed that all employees of her San Francisco Apple Store are subject to screenings, even if they do not carry bags or Apple devices. Another employee testified that he was required to wait for a security check even when he did not have a bag because his jacket had pockets. The court ruled that "the summary judgment record is at best ambiguous about whether the security screenings were mandatory for at least some locations and circumstances." The case has been stayed pending the outcome of *Busk v. Integrity Staffing Solutions, Inc.*, in which the Ninth Circuit held that time spent by non-exempt employees in mandatory security screenings is compensable under the FLSA. The Supreme Court granted *certiorari* in *Busk* and likely will decide the outcome in Spring, 2015.

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