

Fresno law firm's win against Wal-Mart could cost retailer \$100 million

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A Fresno law firm says it has scored a major legal ruling against Wal-Mart that could cost the retail giant more than \$100 million in connection with a federal class-action lawsuit that affects hundreds of truckers in California.

U.S. District Court Judge Susan Illston in San Francisco has ruled Wal-Mart violated California's minimum wage law when it failed to pay its drivers for all the tasks they do.

Those unpaid tasks include waiting in line to load or unload their cargo, time spent to fill out federally mandated trip slips and washing and fueling their trucks.

"Under California law, the drivers must be paid for all the time that they were subject to Wal-Mart's control," Illston wrote in a [May 28 ruling](#).

"Here, certain required tasks are specifically designated unpaid activities," Illston said of Wal-Mart's pay plan for its truckers.

Fresno attorney Butch Wagner, whose firm represents 720 past and present Wal-Mart drivers, including 140 in the Valley, said Tuesday that the judge's ruling "is a big victory for our clients."

Back pay for those unpaid tasks, plus interest and penalties, could add up to \$100 million to \$150 million, Wagner said.

Wal-Mart, however, disagrees with the court's decision, company spokesman Randy Hargrove said.

"There has been no finding that any Wal-Mart driver has not been paid minimum wage for each hour worked," Hargrove said. "We intend to continue to defend the company against the claim."

The civil dispute began in 2008 when Wagner, Jones, Kopfman & Artenian sued Wal-Mart, accusing the retailer of wage theft. Wal-Mart then picked the U.S. District Court in the Northern District of California in San Francisco to settle the civil dispute. In September last year, Illston certified the class-action case.

Wal-Mart has three distribution centers in California: Porterville, Apple Valley and Red Bluff.

According to Hargrove, Wal-Mart drivers are among the best paid in the industry, earning, on average, between \$80,000 to over \$100,000 per year.

"Wal-Mart is a great place to work, as demonstrated by the fact that more than 90% of our drivers have been with the company for more than 10 years," said Hargrove.

But Wagner contends that Wal-Mart short-changes its drivers by paying them by the mile.

Unlike other states where paying by the mile is permissible, California law says truck drivers are supposed to get paid for all the tasks they do, Wagner said.

But Wal-Mart's lawyers contend in court filings that Wagner's interpretation of the law is wrong.

The central issue is no different than that of a housekeeper who is paid not by the hour, but for each house cleaned, the lawyers contend.

To clean a house, the housekeeper must sweep the floors, vacuum the rugs, scrub the bathrooms, mop the tiles, wait for them to dry, wipe down the countertops and so forth.

“Nothing in the Labor Code requires a separate ‘pay code’ for each act that goes into cleaning the house,” Wal-Mart’s lawyers say in court papers.

If Wagner’s interpretation of the law is correct, the lawyers said in court filings that it would lead to absurd results that the California Legislature never could have intended: it would require a separate pay code for wringing a mop, carrying a bucket of cleaning supplies and for each sweep of the broom.

“Does the Labor Code require drivers to be separately paid for putting a key in the ignition or while sitting at a stop light?” the lawyers said. Must Wal-Mart use a separate pay code for a pre-trip inspection and other duties of a trucker? “Plaintiffs provide no principled explanation — nor any legal authority — as to why a separate pay code must be assigned to each and every act comprising the various activities that employees are already paid to perform.”

Wagner said a jury trial will settle the long-standing civil dispute next year.

In addition to unpaid tasks, Wagner has accused Wal-Mart of violating a number of California labor laws, including failing to give its drivers meals and rest breaks.

One big point of contention is whether drivers are adequately compensated for sleeping in their cabs during layovers.

In court documents, Wal-Mart says it pays its drivers \$42 to remain in the cab during the required 10-hour layover period. Wagner says Wal-Mart is being disingenuous.

“Forty-two dollars for 10 hours isn’t even minimum wage,” Wagner said, contending that Wal-Mart offers this bonus so truckers can live in their truck and act as security guards so no one breaks into it.

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