



# Legal-Related News

## Affecting the construction industry By Brenda Molner

*This article was developed for informational purposes and should not be viewed or relied upon as legal advice. After Wynne LLP urges readers to consult legal counsel regarding specific legal issues and factual circumstances.*

### Business, Labor and the Legislature's Response to the *Brink's* Drive-Time Ruling

In a previous newsletter I discussed the *Stevens v. Brink's Home Sec., Inc.* case. In that case the Washington Supreme Court held that Washington's Minimum Wage Act ("MWA") entitled *Brink's* employees driving company vehicles from their homes to jobsites to payment for their drive time. The Court was unmoved by *Brink's* argument that the employees were not required to drive company vehicles home and that being allowed to use a company vehicle for commuting was an employee benefit. While the holding in the *Brink's* case does not mean every employee who drives a company vehicle is entitled to payment for commute time, the case has created uncertainty for both employers and employees since the ruling

went against the assumption the majority of employers and employees had been operating under for years.

Since the ruling in the *Brink's* case, several similar lawsuits have been filed against local companies, some seeking class actions status. In these cases employees are seeking not only past wages, but also double damages, as allowed by statute when an employer "willfully" withholds wages. Plaintiffs are now claiming employers that failed to pay their workers for drive time after the *Brink's* ruling are willfully withholding wages.

Employers are responding to the *Brink's* ruling in various ways. Some employers no longer allow their employees to drive company vehicles home every evening. Instead, company vehicles are parked at a central location which employees must drive to every

workday before proceeding to the jobsite. Some employers have asked employees to sign a waiver for past drive-time wages in exchange for a lump sum payment. Many employers have, or are in the process of, clarifying, changing or establishing their company policies regarding use of company vehicles.

After the *Brink's* decision the Washington Department of Labor & Industries (L&I) made an interim revision to its written administrative policy ES.C.2, regarding the MWA. The interim policy rescinded certain portions of the old policy and states that "L&I is working to update the policy to reflect the *Brink's* decision, but until the policy is updated, this portion of the travel time policy is pending."

Bills have been put forward in both the house and the senate of the Washington legislature

to address the uncertainty caused by the *Brink's* case. The bills attempt to clarify the definitions of "employ" and "work" in a manner that would mean employees simply commuting to work in a company vehicle are not engaged in "work" and are therefore not entitled to payment for drive time. The bills would not alter or effect the terms of any collective bargaining agreements and the changes proposed by the bills would provide some retroactive protection to employers. The bills currently face an uphill battle due to labor's position on the issue.

Industry groups and labor unions have been busy educating their members regarding the potential implications of the *Brink's* ruling. Washington State Labor Counsel's position on the *Brink's* matter is "when a worker goes directly to an offsite work location it is fair they be compensated for that drive time. Labor is willing to work with L&I and the business community to clarify this regulation if indeed this needs to be done." One thing is clear; the *Brink's* issue will be hotly debated during the next round of labor negotiations.

Look to future Puget Sound Chapter newsletters for updates on the drive time issue.

## New Member Highlight

### Julie Stalzer, Associate at DLR Group, Inc.

Ms. Stalzer has been employed with DLR Group, Inc. (DLR) for 29 years. DLR is a national architectural and engineering firm, with local office in Seattle. They offer complete project design services, starting at the earliest stages of planning on through to final documentation. They also offer ongoing client support throughout construction and project closeout.

Ms. Stalzer is the administrator for their Construction Services department. This means that she handles all RFI's (request for information), project submittals, pay applications, and other relevant paperwork. She then assigns the paperwork to the appropriate staff member and continues to monitor the corresponding response time to DLR's client (s).

Ms. Stalzer first heard about NAWIC while visiting NAWIC's tradeshow booth at the Women's Exhibition at SAFECO Exhibition Hall. She ultimately chose NAWIC because she wanted to get to know other women within the construction industry, as well as learning more about the construction industry. She has expressed interest in becoming more involved in NAWIC's

committees, such as Fundraising, Liaison Committee, and Block Kids, hoping to gain increased knowledge about NAWIC and what it may have to offer construction professionals like herself.

Outside of work, Ms. Stalzer loves to travel and enjoys photography, reading, and music.

Welcome Julie!