

# Daily Journal

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## Top Labor & Employment Lawyers 2020

### Kimberly A. Kralowec

**K**ralowec specializes in wage and hour class actions. She served as lead appellate counsel for the employees in one of the most significant wage and hour outcomes of 2020 so far in which the state Supreme Court held that workers are entitled to be paid for undergoing mandatory security searches of their bags and tech devices.

“Body search time meets the definition of controlled time in the plain text of the Wage Order at issue,” said Kralowec, who argued the case before the justices in December. The order links pay to the level of control an employer exerts over a worker during the time in question.

She represents a potential class of more than 12,000 Apple Store employees suing over pay for the time they spend waiting to have their bags checked as part of Apple’s in-house anti-theft protocol. *Friekin v. Apple Inc.*, S243805 (Ca. S. Ct., opinion filed Feb. 15, 2020).

“The other side tried to argue over what ‘control’ means,” added Kralowec, but the court was plainly persuaded that Apple was in charge during the searches. “Applying a strictly textual analysis, Apple employees are clearly under Apple’s control while awaiting, and during, the exit searches,” the opinion says.

The high court ruled against Apple Inc.’s position that employees should not

be compensated because the searches are required only for items brought to work voluntarily. Chief Justice Tani G. Cantil-Sakauye found that ironic, especially in the case of a tech company and its most popular product. “Its characterization of the iPhone as unnecessary for its own employees is directly at odds with its description of the iPhone as an ‘integrated and integral’ part of the lives of everyone else,” she wrote for her colleagues.

The issue has had an airing before both federal and state jurists. Earlier, U.S. District Judge William H. Alsup of San Francisco granted summary judgment to Apple. “We appealed,” Kralowec said. A 9th U.S. Circuit Court of Appeals heard her argument and punted the question to the state Supreme Court, unable to find a clear answer in statute or case law.

The oral sessions featured tough questions from both benches, Kralowec said. “It was a lively argument” at the state high court. “Everybody asked questions except Justice Corrigan. And it was also lively at the 9th Circuit. At the end, I was glad the justices adopted many of our arguments.”

In July 2019 Kralowec achieved a \$17 million class settlement in a case over meal and rest breaks for ambulance EMTs and dispatchers. *Bartoni v. American Medical Response West*, RG08382130 (Alameda Co. Super. Ct., filed May 24, 2017).



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“We’re getting the money out to the class members,” Kralowec said.

— John Roemer