



Supreme Court Holds Time Spent Participating In Security Screenings Not Compensable Work Time Under FLSA

The Supreme Court held yesterday that activities that occur before or after a work shift are not compensable unless they are “intrinsic” to employees’ principal work duties, *i.e.*, doing away with the activities would mean employees could not do the jobs they were hired to do. Through its much anticipated decision in the matter of *Integrity Staffing Solutions v. Busk*, a unanimous Supreme Court restored a measure of predictability regarding the scope of compensability for pre- and post-shift activities. This area has seen an explosion of claims seeking to broaden potential employee claims for unpaid work time over the last decade.

The case decided today arose from a lawsuit brought against Integrity Staffing Solutions (ISS), a warehousing personnel provider. ISS employees sued to obtain payment for the time they spent waiting for and undergoing security screenings at the end of their work shifts, “roughly 25 minutes each day.” The employees contended that, with some due diligence, ISS could have reworked the security screening to reduce the amount of time the screenings took to such a nominal amount that it would be too negligible to account for it as work time (or *de minimis*). ISS countered that the time employees spent going through the security screenings was a non-essential, post-shift activity specifically excluded from inclusion as compensable work time under the Fair Labor Standard Act’s Portal-to-Portal Act amendment.

The trial court sided with ISS, but the Ninth Circuit Court of Appeals reversed. The Ninth Circuit looked at whether the employer imposed the post-shift activity at issue, for its own benefit to determine whether the post-shift activity constituted compensable work time. Finding that theft prevention benefitted ISS, the Ninth Circuit ruled that the screening was essential to the work duties and could be considered compensable time.

The Supreme Court rejected the Ninth Circuit’s reasoning, finding that “[a] test that turns on whether the activity is for the benefit of the employer is . . . overbroad.” It likewise found a test satisfied “merely by

the fact that an employer required [the] activity” too encompassing, reasoning that these over-inclusive standards rendered the Portal-to-Portal Act meaningless. Finally, the Court noted that “[t]he fact that an employer could conceivably reduce the time spent by employees on any preliminary or postliminary activity does not change the nature of the activity or its relationship to the principal activities that an employee is employed to perform.” Thus, the Court found that the only relevant inquiry in these pre- and post-shift situations is whether the activity is compensable as integral and indispensable, regardless of time or benefit derived.

Indeed, the Court reaffirmed a focus on the nature of the activity vis-à-vis what an employee is hired to do, *i.e.*, his or her principal work activity. The Court sided with the position of the U.S. Department of Labor, holding that a post-shift security check was not integral or indispensable. The Court specifically held that an activity is compensable only “if it is an intrinsic element of [the principal work activities] and one with which the employee cannot dispense if he is to perform his principal activities.”

Not only is this decision helpful to employers in warding off more lawsuits seeking compensation for pre- and post-shift activities, it is also timely. As many employers in the retail sector are gearing up for a busy holiday season by adding temporary employees to their existing workforce, they can do so with a greater measure of comfort about the fact that most pre- and post-shift activities will likely not be considered work time. Employers, however, must remain mindful that not all pre- and post-shift activities are necessarily excluded from compensation. When the activity at issue can arguably be classified as integral and indispensable to the performance of the employee’s principal work activities, excluding that activity from compensation entails legal risk and should be carefully evaluated with assistance from legal counsel.

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