Bradford Williams

Of Counsel
303.295.8121
Denver
bjwilliams@hollandhart.com

Supreme Court Says No Pay For Security Screening Time

Publication — December 12, 2014

Should employers pay employees for time spent in mandatory, post-shift security screenings designed to deter theft? Not according to a recent Supreme Court decision.

On December 9, 2014, the Supreme Court unanimously held in Integrity Staffing Solutions, Inc. v. Busk, No. 13-433 (2014), that post-shift, anti-theft security screenings are not compensable work time under the Fair Labor Standards Act (FLSA). The decision reversed a Ninth Circuit decision holding that workers in two Amazon.com warehouses were entitled to pay for periods spent waiting for, and being screened at, security checkpoints after their shifts had ended. The workers claimed that they spent roughly twenty-five minutes per day in such screenings, which included removal of their wallets, keys, and belts.

Splitting from other courts to have considered the issue, the Ninth Circuit held that such time was compensable because the workers' post-shift screening activities were necessary to their principal work activities, and were performed for the benefit of their employer. However, the Ninth Circuit's understanding of compensable work time under the FLSA echoed that in earlier judicial decisions that had been expressly overruled by Congress.

Specifically, in response to a flood of litigation caused by the earlier decisions, Congress had passed the Portal-To-Portal Act in 1947 to clarify that employers are not obligated to pay employees for activities which are “preliminary” or “postliminary” to the principal activities they are employed to perform. As such, time spent before or after a worker's “principal activities” is not compensable unless it is spent on activities that are themselves “integral and indispensable” to the worker's principal activities. Regulations interpreting the Portal-To-Portal Act had long held that activities like checking into and out of work, or waiting in line to receive paychecks, is not compensable work time.

In its December 9th ruling, the Supreme Court reaffirmed that just because an activity may be required by, or may benefit, an employer, does not mean that it is a compensable “principal activity,” or is “integral and indispensable” to a principal activity. The warehouse workers' employer did not employ the workers to undergo security screenings; it employed them to retrieve products from warehouse shelves and to package the products for shipment to customers. The security screenings were also not “integral and indispensable” to the warehouse workers' principal activities because their employer could have eliminated the screening requirement altogether without impairing the workers' ability to perform

their jobs.

In reaching its decision, the Supreme Court stated a new definition of "integral and indispensable" activities to guide lower courts. An activity is now "integral and indispensable" to an employee's principal work activities if it is an "intrinsic element of those activities and one with which the employee cannot dispense if he is to perform his principal activities." Examples include time spent by battery-plant employees showering and changing clothes because chemicals in the plant are toxic to humans. It also includes time spent by meatpacker employees sharpening knives because dull knives cause inefficiency and other problems on the production line.

The Supreme Court's decision gives employers much-needed certainty regarding the compensability of certain "preliminary" or "postliminary " activities. It clarifies that most employers may continue performing uncompensated pre- and post-shift security or anti-theft screenings without fear of successful FLSA collective actions. The decision is particularly relevant to employers in the retail industry, who regularly conduct anti-theft screenings, and to other employers who are increasingly performing security screenings in an era of heightened concerns over terrorism.

Because the FLSA sets minimum standards for wage and overtime payments, states may set higher standards for compensable work time, including with respect to "preliminary" or "postliminary" activities. Unions may also bargain with employers to make such activities compensable. But the Supreme Court's recent decision helps push back on the tide of FLSA collective actions filed by employees claiming that certain activities are compensable because they are essential to their jobs. The decision also follows a similar Supreme Court decision in January 2014, Sandifer v. U.S. Steel Corp., No. 12-417 (2014), in which the Court held that time spent by union-employees donning and doffing personal protective equipment was not compensable. Taken together, these decisions suggest a concerted judicial effort to address the explosion of FLSA collective actions.

For more information contact:
Brad Williams
Holland & Hart LLP
Email: bjwilliams@hollandhart.com
Phone: 303-295-8121