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Should Employers Pay Employees for Time Spent Waiting for Computers To 'Boot Up' Before Employees Even Clock In?

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Employers that decline to pay employees for time spent waiting for computers to "boot up" could be in violation of the Fair Labor Standards Act ("FLSA") according to the U.S. Ninth Circuit Court of Appeals. *Cadena et al. v. Customer Connexx LLC et al.*, No. 21-16522 (9th Cir. Oct. 24, 2022).

In *Customer Connexx*, employees who worked in-person as call-center agents at Customer Connexx LLC's Las Vegas call center, brought a collective action under the FLSA, alleging that the company had failed to properly compensate them for time they spent booting up their computers prior to clocking into the company's electronic timekeeping system and turning off their computers after clocking out of the timekeeping system. The workers' primary duties were to provide customer service and scheduling to customers over a "soft phone" operated through their employer-provided computers. According to the workers, depending on the age of the computer, it would take anywhere from one to twenty minutes for the computer to boot up and between less than a minute and fifteen minutes for the computer to boot down. On average, the workers estimated that the boot-up time was between six and twelve minutes, and the boot-down time was between 4.75 to 7.75 minutes. The employees asserted that they should have been compensated for this time as it was an integral and indispensable part of their primary job responsibilities.

In July 2021, the district court granted summary judgment in Customer Connexx's favor, finding that the tasks the workers completed before and after logging out of the company's timekeeping system were not compensable because they were not "principal activities." The district court reasoned that Customer Connexx could eliminate the electronic timekeeping altogether, and the employees would still be able to perform their duties.

A three-judge panel for the Ninth Circuit disagreed. Initially, the panel noted that, under the Portal-to-Portal Act, preliminary and postliminary activities are compensable if they are an integral and indispensable part of the workers' principal activities. The panel emphasized that not all employer-required activities are compensable. Citing to *Integrity Staffing Solutions, Inc. v. Busk*, 574 U.S. 27, 36 (2017), the panel explained,

however, that an activity is integral and indispensable to the principal activities that the employee is hired to perform “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.” Stated another way, when the required activity bears such a close relationship to the employees' principal duties that employees cannot eliminate the required activity and still perform their principal duties, the activity is compensable. *Customer Connexx LLC et al.*, No. 21-16522 at *16.

Applying this rationale to the case before it, the panel stated the district court had erroneously focused on whether “engaging with a computer and loading a timekeeping program to clock in” was an integral part of the employees' duties. According to the panel, the district court should have instead put emphasis on whether “engaging the computer, which contains the phone program, scripts, customer information, and email programs is integral to the employees' duties.” The panel held that the time was compensable because “the employee's duties cannot be performed without turning on and booting up their work computers, and having a functioning computer is necessary before employees can receive calls and schedule appointments.” *Customer Connexx LLC et al.*, No. 21-16522 at *14.

While the panel concluded booting up the computer is compensable, the panel remanded the case back to the district court for a determination of whether: (i) the time spent booting down was compensable; (ii) the time spent booting up and down was not compensable under the *de minimis* doctrine; and (iii) Customer Connexx lacked actual or constructive knowledge of the alleged overtime worked, such that it did not violate the FLSA by failing to pay for it.

Notably, the Ninth Circuit panel expressly clarified that its holding was limited to the facts of this case—namely, to situations where employees were performing their duties in person at their employer's worksite, using employer-provided equipment. The panel indicated that it did not offer an opinion as to whether the boot-up and boot-down time would be compensable if the employees worked remotely or used their personal computers to perform their jobs.

As more and more jobs rely on computers as employees' primary tool, employers should reevaluate whether they are properly compensating employees under the FLSA in light of this decision.

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