

Reminder: Time Spent Waiting in Line to Enter or Exit Work May Be Compensable

Labor & Employment Law Update

By Peter Hansen on August 2, 2021



Employers who require employees to undergo mandatory security checks, health screenings, or similar pre- or post-shift activities take note: a growing number of courts have determined time spent waiting to undergo and actually undergoing the check or screening may be compensable under state law.

The most recent example is the Supreme Court of Pennsylvania, which concluded that the time Amazon employees spent on their employer's premises "waiting to undergo, and undergoing, mandatory security screening" was compensable time under state law. That "state law" part is significant – as we noted last year, courts have routinely determined that similar time spent waiting is not necessarily compensable under the federal FLSA, but the FLSA often differs from state law in terms of activities performed before and after a shift.

Pennsylvania is the latest court to reach this conclusion – California, New Jersey, and New Mexico courts recently held that time spent waiting for and undergoing mandatory searches of employees' bags, packages, purses, backpacks, briefcases, and so on is compensable. We can expect more states to weigh in on this issue soon – the Eastern District of Wisconsin is currently addressing a class action lawsuit alleging that employees should be compensated for time spent undergoing COVID-19 screening.

This trend should be particularly concerning to Illinois and Wisconsin employers, given that neither state relies on federal law for guidance on compensability of pre- or post-shift activities. However, all employers who require employees to

undergo security checks or COVID-19 screening either before or after their shifts, regardless of location, should consult with trusted counsel to discuss compensation obligations.

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