Supreme Court Holds that Donning and Doffing of Work Gear Under a Collective Bargaining Agreement is "Changing Clothes" Under FLSA Section 203(o)

Labor & Employment Law Update

By Sara Zorich on January 28, 2014

On January 27, 2014, in *Sandifer v. U.S. Steel Corp.*, 12-417, 2014 WL 273241 (U.S. Jan. 27, 2014), the U.S. Supreme Court upheld the Seventh Circuit decision that time spent donning and doffing protective gear was time spent "changing clothes" under Section 203(o) of the FLSA allowing parties to a collective bargaining agreement the ability to bargain over compensability of such time at the beginning and end of the work day.

Clifton Sandifer filed a collective action under the FLSA seeking compensation for the time he and others spent donning and doffing work gear items including: flame-retardant jackets, pair of pants, hoods, hardhats, snoods, wristlets, work gloves, leggings, steel-toed boots, safety glasses, earplugs and respirators. U.S. Steel argued that such time was not compensable under the FLSA because it had bargained on the issue of donning and doffing and made it part of its collective bargaining agreement with Sandifer's union.

Section 203(o) of the FLSA provides that compensability of time spent "changing clothes or washing at the beginning and end of each work day" is subject to the collective bargaining process. However, the debate ensued as to what constituted "changing clothes" under the law. Sandifer argued that anything protective in nature could not be deemed clothes under the FLSA. The Supreme Court disagreed with Sandifer finding that only three (3) of the items Sandifer was required to don and doff did not qualify as clothes: glasses, earplugs and respirators while the other nine (9) items should be deemed as clothes. The Supreme Court then went on to hold that the proper standard for determining whether the time spent "changing clothes" is covered by 203(o) must be looked at for a period *on a whole*. Thus, where an employee spends the vast majority of his/her time in question donning and doffing clothes then the time is not compensable, but if the majority of time is spent donning and doffing non-clothes items the entire time period is compensable. Here, the Court held that

the majority of time was spent changing clothes and little time was spent putting on and taking off non-clothes items thus the employee did not have to be compensated for any donning and doffing time under Section 203(o). The Court choose to adopt the new method of view the period "*on a whole*" for 203(o) matters over applying the *de minimus* doctrine as had been previously done by the Seventh Circuit.

Practice Pointer – This case is only applicable to situations involving a union workforce and when the issue has been the subject of fair bargaining between the union and the employer. Further, if the state in which the employee is employed has a more restrictive or stringent state law applicable to payment of time spent donning and doffing than the provisions of the FLSA, the employer must follow the state law and may not be afforded the Section 203(o) exception to compensating for donning and doffing. This case is another reminder for employers to carefully review and regularly audit all payroll, time keeping and compensation practices.

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