

Supreme Court Rules No Pay for Employees' Time Waiting in Security Line

Labor & Employment Law Update

By Sara Zorich on December 9, 2014

On December 9, 2014, the U.S. Supreme Court handed down a victory for employers in *Integrity Staffing Solutions, Inc. v. Busk*, No. 13-433, 2014 WL 6885951 (U.S. Dec. 9, 2014) when the Court held that time spent by employees waiting for and undergoing security screenings before leaving the employer's workplace was not compensable under the Fair Labor Standards Act (FLSA).

Plaintiffs sued Integrity Staffing Solutions alleging that it required hourly workers to undergo anti-theft screening, taking about 25 minutes per day, before leaving the warehouse and the end of each shift and that such time was compensable time under the FLSA.

The Supreme Court overturned the Ninth Circuit by deciding that the security screenings were noncompensable postliminary activities under the FLSA. The Court stated that the screenings were not the principal activities the employees were employed to perform. Instead, employees were hired to retrieve products from warehouse shelves and package such for shipment. Furthermore, the Court held that the activities were not "integral and indispensable" to the employee's job activities. The Court noted that "an activity is therefore integral and indispensable to the principal activities that an employee is employed 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."

The Court's decision rejected the Ninth Circuit's test focusing on whether the activity was required by the employer and instead looked to whether the activity was tied to the productive work the employee was hired to perform. The Court held that a test that turns on whether the activity is for the benefit of the employer is overbroad and would make activities compensable that the Portal-to-Portal Act was enacted to address. The Court provided further guidance noting that an activity is compensable if the employee could not perform his/her principal activities without putting on certain clothes but would not be compensable if changing clothes was merely for the convenience of the employee and not directly related to his/her principal activity.

Conclusion: This decision clarifies and limits what are compensable activities under the FLSA. If the pre or post activity is something the employee must do in order to perform the principal activities of his/her job then it is compensable. In light of this decision, employers should review their pay policies and procedures and consult with employment counsel regarding the applicability of the Portal-to-Portal Act.

Supreme
Court Rules
No Pay for
Employees'
Time
Waiting in
Security Line