

CLIENT ALERT: Supreme Court Rules That Time Spent Clearing Security Is Non-Compensable Time Under the FLSA

The U.S. Supreme Court held on December 9, 2014, that employers are not required to pay employees for post work security screenings after the end of the workday. In *Integrity Staffing Solutions, Inc. v. Busk*, a unanimous Court held that hourly warehouse workers were not entitled to compensation under the Fair Labor Standards Act of 1938 (“FLSA”) and the related Portal-to-Portal Act for the up to 25 minutes a day spent waiting to clear security screenings as they left the worksite.

The suit was filed by former hourly workers who were employed by Integrity Staffing to work in an Amazon.com warehouse retrieving merchandise from warehouse shelves and packaging them for delivery. Like many retail employers, Integrity Staffing required its employees to undergo a security screening after they had clocked out before leaving the warehouse at the end of their shifts. During the screening, employees waited in line and then removed items such as wallets, keys, and belts from their persons and passed through metal detectors. The former employees filed a putative collective action suit under the FLSA claiming that they were entitled to compensation for the post-shift time. They contended that they spent significant time waiting to undergo and undergoing the screenings, that their employer could have reduced that time by adding staff or scheduling shifts, and that the screenings were conducted to prevent employee theft and were therefore for the sole benefit of the employers and their customers. The court rejected their claims and effectively ended the suit.

The FLSA establishes a minimum wage and overtime compensation for each hour worked in excess of 40 hours in each workweek. A separate statute called the Portal-to-Portal Act, which was enacted to clarify the FLSA, does not require employers to compensate employees for “activities which are preliminary to or postliminary” to the employee’s principal activities, unless the activities are “integral and indispensable” to their principal activities.

The *Integrity Staffing Solutions* case makes clear that an activity is “integral and indispensable to the principal 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.” Accordingly, the Supreme Court held that the end of day screenings at the warehouses were not part of the workers’ principal activities, or an integral part of the job, writing: “Integrity Staffing did not employ its workers to undergo security screenings, but to retrieve products from warehouse shelves and package those products for shipment to Amazon customers.”

The Court expressly rejected the analysis of a lower court, which had focused on whether an employer required an employee to engage in the at-issue activity. The Supreme Court held that by failing to tie activities to the employee’s performance of productive work, the lower court had broadened the definition of “principal activities” to include activities excluded from compensation under the Portal-to-Portal Act. Instead, because time spent by employees waiting to undergo and undergoing security screenings did not meet the criteria of being intrinsic of the employees’ principal activities which

could not be dispensed, the time was non-compensable.

The case will have a significant impact on several similar class action cases pending against retail employers around the country. In addition, the case will affect numerous retail and other employers that require relatively short post-work screenings. Notably, this decision does not render all “preliminary” or “postliminary” activity non-compensable. Although the case will have an impact on the compensability of some activity other than security screenings, employers must conduct an individualized analysis of whether the activity is “integral and indispensable” before determining whether the time may not be paid.

Employers who require performance of a pre- or post-work activity, including security screenings, clothes changing, set-up, and pre- and post-work inspections, should contact MBJ to determine the compensability of these activities.

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