Supreme Court Holds Time Spent by Workers in Post-Shift Security Screenings Is Not Compensable Time under the Fair Labor Standards Act

Reversing the Ninth Circuit Court of Appeals, a unanimous Supreme Court held on December 9, 2014 in *Integrity Staffing Solutions, Inc. v. Busk* that workers were not entitled to compensation for the time spent waiting in line for and undergoing security screenings after their shift ended.

The employer in the case, Integrity Staffing Solutions, Inc. ("Integrity Staffing") provided warehouse staffing services to Amazon.com and assigned warehouse employees to retrieve products from shelves and package those products for delivery to Amazon customers. At the end of the shift, the employees were required by Integrity Staffing to undergo security screenings before leaving the warehouse to prevent and detect employee theft.

Two employees filed a putative class action, claiming this time was compensable under the Fair Labor Standards Act (FLSA) because it was conducted for the benefit of the employer, and also alleged that the roughly 25 minutes of time spent waiting for and undergoing security screenings could have been reduced to a *de minimus* amount by increasing the number of screeners or by staggering the end times of shifts.

However, the Court found that the Portal-to-Portal Act, which amended the FLSA, specifically excluded from compensable time the time spent on "activities which are preliminary to or postliminary" to principal activities, i.e., which occur prior to the start of or after completion of the principal activities of the workers. Relying on its prior decisions, the Court defined principal activities as including not only the principal activities but also all activities which are "integral and indispensable" to the principal activities. Defining the standard further, the Court explained that an activity is "integral and indispensable" to principal activities if it is "an intrinsic element of those activities" and if the principal activities cannot be performed without this task.

In holding that the time associated with security screenings was not compensable, the Court found that the employees’ principal activity for Integrity Staffing was retrieving products from warehouse shelves and packaging those products, not undergoing security screenings. The Court further found that the security screenings were not "integral and indispensable" to the principal activities because the screening process could be abandoned without impairing the employees’ ability to retrieve or package products. The Court noted that its decision was consistent with two previous opinion letters by the Department of Labor, in which the Department had stated that a pre-shift security screen for safety reasons and a post-shift screening for anti-theft reasons were not compensable activities.

Finally, the Court held that the Ninth Circuit (whose decision had stood at odds with the decisions by the other federal appellate courts that have ruled on this issue) erred by focusing on whether the activities were required by and benefited the employer, rather than on the relationship of
the screenings to the productive work that the employee is engaged to perform. The Court noted that the test applied by the Ninth Circuit would “sweep into ‘principal activities’ the very preliminary and postliminary activities that the Portal-to-Portal Act was designed to address.” The Court likewise rejected the employees’ argument that a preliminary or postliminary activity should be compensable simply because the amount of time spent on the activity could be reduced by employers. Responding to the argument that employers have no incentive to expedite the screening process if the time is not compensable, the Court noted that this argument would be better raised by workers at the bargaining table.

This decision is of particular importance to those businesses concerned that a contrary decision by the Court could have resulted in having to discontinue screenings due to costs and timekeeping impracticalities, which in turn could decrease safety and increase employee theft and costs to the consumer. This decision reiterates that simply because an employer may require a particular activity of an employee in conjunction with work does not necessarily mean that the activity need be compensable to an employee if it is a preliminary or postliminary activity subject to the Portal-to-Portal Act.

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