

PUBLICATION

Are Postliminary Activities No Longer Compensable after the Supreme Court's Decision this Week?

Authors: Jennifer G. Hall

December 16, 2014

In a unanimous decision on December 9, 2014, the United States Supreme Court held that the time employees spent waiting to undergo and undergoing security screenings post-shift (approximately 25 minutes each day) is not compensable time under the Fair Labor Standards Act (FLSA). However, that case does not stand for the proposition that all postliminary activities are now not compensable under the FLSA. The case is *Integrity Staffing Solutions, Inc. v. Busk, et al.*, No. 13-433, and a deeper review of the case is needed.

Integrity Staffing Solutions is a staffing company that provides warehouse workers to Amazon.com. As part of their job duties, the warehouse workers "retrieved products from the shelves and packaged those products for delivery to Amazon customers." At the end of each day, in an effort to prevent theft, Integrity required the employees to go through a security screening before allowing the employees to leave the warehouse. As part of the screening, "employees removed items such as wallets, keys, and belts from their persons and passed through metal detectors."

Two employees filed a putative class action in 2010 in Nevada, arguing that they were entitled to compensation under the FLSA for the time spent waiting for and undergoing the post-shift security screening. The District Court dismissed for failure to state a claim upon which relief could be granted. That decision was appealed to the Ninth Circuit Court of Appeals which held that the time was compensable because the screenings were necessary to the employees' primary work as warehouse employees and done for Integrity's benefit. The appeal then proceeded to the Supreme Court.

In reviewing the case, the Supreme Court briefly noted the history of the FLSA. Namely, the Court noted that the original FLSA did not define "work" or "workweek," and that, after a series of cases applied expansive definitions of those terms, a flood of litigation ensued. In response, Congress enacted the Portal-to-Portal Act. The Portal-to-Portal Act excluded from compensation the time 1) "walking, riding, or traveling to and from the actual place of performance of the principal activity or activities which such employee is employed to perform," and 2) "activities which are preliminary to or postliminary to said principal activity or activities, 'which occur either prior to the time on any particular workday at which such employee commences, or subsequent to the time on any particular workday at which he ceases, such principal activity or activities.'"

The Court's analysis focused on three arguments. First, security screenings are not integral and indispensable activities of the position of a warehouse worker. Specifically, the Court held:

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 security screenings also were not "integral and indispensable" to the employees' duties as warehouse workers. As explained above, an activity is not integral and indispensable to an employee's principal activities unless it is an intrinsic element of those activities and one with which the employee cannot dispense if he is to perform those activities. The screenings were not an intrinsic element of retrieving products from warehouse

shelves or packaging them for shipment. And Integrity Staffing could have eliminated the screenings altogether without impairing the employees' ability to complete their work.

Second, the Court rejected the Ninth Circuit's focus on the fact that the security screenings were required by Integrity Staffing. "If the test could be satisfied merely by the fact that an employer required an activity, it would sweep into 'principal activities' the very activities that the Portal-to-Portal Act was designed to address. ... A test that turns on whether the activity is for the benefit of the employer is similarly overbroad." Per the Supreme Court, the proper focus is on the integral and indispensable duties of the position.

Finally, the Court dismissed the argument that the time waiting for the security screening should be compensable because Integrity Staffing could have reduced, but failed to, the wait-time to a *de minimus* amount. "The fact that an employer could conceivably reduce the time spent by employees on any preliminary or postliminary activity does not change the nature of the activity or its relationship to the principal activities that an employee is employed to perform. These arguments are properly presented to the employer at the bargaining table"

What does this case mean for employers? It highlights the case-by-case nature of FLSA issues. Specifically, the focus is on the actual activities needed to accomplish the nature of the work. The Supreme Court did NOT adopt a carte blanche rule that post-shift security screenings are not compensable under the FLSA. Instead, the Court did give specific examples of postliminary activities that are compensable, such as battery workers changing clothes post-shift and meat-packers sharpening their knives. Again, the focus is on the principal activity or activities the position for which the employee is employed.