

CLIENT ALERT

Supreme Court Rejects Worker Pay for Security Screenings

Dec.11.2014

The Supreme Court gave employers some good news this week in deciding that time spent by workers going through a theft-prevention security screening at the end of their shifts need not be compensated under the Fair Labor Standards Act. In a 9-0 ruling, the Court sided with the employer, determining that post-shift security screening procedures were not "integral and indispensable" to the workers' principal duties. The Court also clarified the standard to determine whether pre- and post-shift activities must be compensated under the FLSA.

The case, *Integrity Staffing Solutions, Inc. v. Busk* (opinion [here](#)), featured workers who ship products from an Amazon warehouse in Nevada. At the end of their shifts, these workers were required to spend up to 25 minutes waiting for and undergoing security screenings that included metal detectors and inspections of bags. The plaintiffs argued that the time spent waiting in line and then going through the screening process should be paid because these steps were required by, and were for the benefit of, the employer. Their argument had prevailed in the Ninth Circuit.

The Supreme Court reversed. In a December 9, 2014 opinion written by Justice Thomas, the Court rejected the plaintiffs' principal argument that the activity should be compensated if it is "required by the employer." The Court held instead that in deciding whether time is compensable under the FLSA—as amended by the Portal-to-Portal Act—the proper question was whether the activity in question is "integral and indispensable" to the principal activities that an employee is employed to perform, *i.e.*, whether the activity is an "intrinsic element" of the employee's job.

To resolve this question, the Court held that the answer would depend on whether the activity in question could be eliminated from the employee's schedule altogether without impairing his or her ability to perform the job's principal duties safely and effectively. Here, the Court found that the workers were not hired to go through security screenings but to retrieve products from the Amazon warehouse shelves and package them for shipment; they could perform those duties without ever going through security screenings. Therefore, this activity did not qualify as "integral and indispensable"—and was thus not compensable. Justices Kagan and Sotomayor filed a concurring opinion that adopted the reasoning of the Court but did not accept the requirement that the activity at issue must be an "intrinsic element" of the job.

The Court's reasoning relied on the language of the Portal-to-Portal Act, prior court decisions interpreting that language, as well as a 1951 U.S. Department of Labor (DOL) opinion letter. In that opinion, DOL—which sided with the employer in *Busk*—had advised that the employer was not required to compensate employees for time spent in pre-shift security searches (which sought to prevent employees from bringing spark-producing devices into a rocket-powder plant) and post-shift security searches aimed at preventing theft.

Further, the Court held that the expansion of compensable activities to include tasks that were unrelated to employees' productive work would force employers to pay for the sort of pre- and post-shift activities that the Portal-to-Portal Act was specifically meant to exclude from compensation.

The Court also rejected the plaintiffs' argument that the security screenings should be compensable because the employer could have shortened the necessary time by staggering shifts or hiring more screeners. The Court held that this argument had no bearing on the FLSA and should be presented to the employer "at the bargaining table . . . , not to a court in an FLSA claim."

The *Busk* requirement that a pre- or post-shift activity be an "intrinsic element" of the employee's job duties in order to be compensable is good news for employers in myriad industries. This requirement will apply not only to security screenings but also to other circumstances in which employees have asserted claims for compensation for pre- and post-shift activities, such as booting up computers in call centers and certain donning and doffing activities.

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