

Compensable Time Client Alert -2005

Supreme Court Clarifies Law on Compensable Time Before and After Work

How you track your employees' time can implicate not only the FLSA but may raise workers' compensation issues.

November 11, 2005

Does an employer have to pay for time employees spend walking at their work site after putting on ("donning") and before taking off ("doffing") required protective gear? That was the issue in one of the first decisions handed down by the US Supreme Court this term under the new Chief Justice. The Court, in a unanimous opinion, issued a decision that was both a win and a loss for employers.

The two cases on appeal involved food manufacturing workers who would arrive at work, wait to put on protective gear, put on the gear, and then walk to their workstation to begin work. At the end of the day, the employees did the reverse. The Court was asked what time, if any, was compensable and subject to minimum wage and overtime laws. The Court first acknowledged its longstanding position since 1956 that the "donning and doffing of specialized protective gear" before and after the work shift is compensable. According to the Court, since donning and doffing started and stopped the work day, then walking to and from the workstation after donning and before doffing must also be compensable.

However, the Court did not consider waiting to put on protective gear to be compensable under the facts of the case. Distinguishing it from other cases where the employee was expected to report to a workstation at a particular time and may have to wait to begin actually working, the Court held that waiting to put on protective gear is part of preliminary activities, much like walking from the parking lot, that is not compensable under the Fair Labor Standards Act ("FLSA").

The Court did not need to reach the issue of the donning and doffing of "non-unique" protective gear, such as hard hats and safety goggles. A lower court had concluded this activity was de minimus and did not require compensation.

The Court's central holdings for you to take from this case are:

- 1) The time employees spend walking to and from their work site after changing into and before changing out of specialized protective gear is compensable under the FLSA; and
- 2) When the workday begins with the donning of the first piece of protective gear, the time spent by the employee waiting to do so is not compensable.

How you track your employees' time can implicate not only the FLSA but may raise workers' compensation issues, OSHA questions, union organizing prevention and other management issues. If you have any questions how this ruling affects your timekeeping practices, feel free to contact us.

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