

# **Is Compensation Owed for All Employer-Required Activities?**

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An employer requires a large number of its employees to spend (on average) between two and two and one-half hours per week performing certain activities prior to leaving the employer's jobsite. The employees' demand for compensation (and presumably overtime compensation) for the time expended is denied by the employer. The question presented to and answered by the U.S. Supreme Court is "whether the employees' time spent waiting to [perform and performing the required activities] is compensable under the Fair Labor Standards Act" of 1938 ("FLSA") as amended by the Portal-to-Portal Act of 1947.

According to the employees, the preceding short synopsis contains all the facts needed in order to sustain a finding that compensation is due. The Ninth Circuit Court of Appeals agreed. However, the District Court and the Supreme Court disagreed with the employees. The Supreme Court stated that post-shift activities are compensable if (1) the activities are necessary to the principal work the employees perform for the employer and (2) done for the benefit of the employer. In establishing that two-part test, the Court rejected the employees' argument that the time should be compensable simply because the activity they were required to perform was required by and benefitted the employer. Instead, the Court focused on what tasks the employees were hired to do and what was required of them after their shifts ended.

In the case, *Integrity Staffing Solutions Inc., et al. v. Busk*, — U.S. — (December 9, 2014) the employees were hired by Integrity Staffing to work at a warehouse and fulfill orders for Amazon.com customers by retrieving products from shelves and packaging the products for delivery. At the end of the shift, warehouse employees were required to undergo security screenings (similar to airport screenings) for the sole purpose of preventing employee theft. The time expended in going through the security screenings amounted to roughly 25 minutes per day.

Integrity Staffing and the employees agreed that the security screenings were not "principal activities" – meaning the security screenings were not part of work the employees were hired to perform. Given that agreement, compensation would be owed to the employees only if the security screenings were an "integral and indispensable part of the" activities for which the employees were hired. The Court said "integral and indispensable" activities are those: (1) which are "intrinsic elements" of the activities the employees were hired to perform and (2) with which the employee cannot dispense (either because of personal safety or productivity) in order to complete the work the employee was hired to perform.

In support of its decision, the Court cited two examples of pre- or post-shift activities for which compensation was owed and two examples of pre- or post-shift activities for which compensation could be denied. Compensation was owed to employees of a battery plant for the time spent showering after the conclusion of their shifts as the chemical residue was "toxic to human beings." Compensation was also owed to meatpacker employees who, before their shifts began, honed their knives since dull knives would slow down production, affect the appearance of the meat, cause waste and potentially lead to accidents.

Compensation was not owed to poultry plant employees for the time spent donning protective gear since that time was "two steps removed from the productive activity on the assembly line." The Court also cited regulations passed by the Department of Labor ("DOL") which explained that time spent waiting to check in or check out of work as well as time waiting in line to do so was not compensable.

Finally, the Court cited a 1951 DOL Opinion Letter regarding a pre-shift safety search of employees of a rocket-powder plant for any device that could cause a spark and a post-shift search of the same employees for the purposes of preventing theft. That Opinion Letter had concluded that neither activity involved compensable time.

The Court reasoned that allowing the employees to satisfy the test by arguing the activity was required by the employer would convert all activities required by an employer into "principal activities" in contravention of the amendments to the FLSA enacted by the Portal-to-Portal Act of 1947. The Court also found a test which turns on whether the activity benefits the employer is overbroad.

Finally, the Court rejected the contention that the time should be compensable since the employer could reduce the amount of time spent at the security screenings to a *de minimis* amount by staggering the times shifts end or hiring additional screeners. The Court stated these were arguments the employees should present to Integrity Staffing at the bargaining table.

Thus, the Court concluded that none of the employees in the putative class were entitled to compensation for the two to two and one-half hours per week spent waiting in line for the post-shift security screenings.