

EMPLOYER LAW BLOG

Supreme Court Explains Compensable Time

AUTHOR: SANDBERG PHOENIX

By John L. Gilbert

Gilbert, John and or type unknown

On December 9, 2014, the U.S. Supreme Court decided a case addressing when preliminary or postliminary activities at work are compensable under the FLSA.

In the case of *Integrity Staffing Solutions, Inc. v. Busk*, the Supreme Court held that time employees spent waiting to undergo security screening and actually undergoing the screening was not compensable under the FLSA.

The employees of Integrity Staffing Solutions who worked at a warehouse retrieving inventory and packaging it for shipping were required to undergo security screenings before leaving the warehouse each day after their shifts. They claimed that the time was compensable. The Supreme Court disagreed. After a brief history of the FLSA and the Portal-to-Portal Act, which was amendment to the FLSA, the Court restated the standard for exemption under the FLSA for activities that are preliminary or postliminary to principal work activity or activities.

The Court reiterated its definition of principal activity or activities as those which are integral and an indispensable part of the principal activities. The Court held that an activity is integral and indispensable if it is an intrinsic element of those activities (the job) and one with which the employee cannot dispense if he is to perform his principal activities. The Court's definition is not only consistent with past precedent but with relevant Department of Labor regulations.

The Court concluded that the security screenings are non-compensable postliminary activities because they had nothing to do with the jobs of the employees, i.e., retrieving products from warehouse shelves or packaging them for shipment.

The Court of Appeals for the Ninth Circuit (frequently reversed by the U.S. Supreme Court) erred in finding the time compensable because it focused on whether the employer required the activity as opposed to whether it was intrinsically related to the activities of the job.

This decision removes some of the ambiguity in the often litigated issue of what preliminary and postliminary activities are compensable under the FLSA. While employers should seek legal advice on the issue in a particular case, the Supreme Court has made it clear that a preliminary or postliminary activity is integral and indispensable to the principal activities that an employee is employed to perform (and thus compensable) only if it is an intrinsic element of those activities and one “with which the employee cannot dispense if he is to perform the principal activities.”