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“Donning and Doffing” Protective Gear Not Compensable Time for Union-Represented Employees

Legal Update

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On January 27, 2014, the United States Supreme Court affirmed a Seventh Circuit Court of Appeals decision holding that time spent donning and doffing (putting on and taking off) protective gear was time spent changing clothes, and was therefore not compensable time under the Fair Labor Standards Act (FLSA). Under the FLSA, time spent changing clothes at the beginning and end of the workday may be excluded from compensable time under the terms of a collective bargaining agreement (CBA).

In the case, *Sandifer v. U.S. Steel Corp.*, No. 12-417 (Jan. 27, 2014), steelworkers had to don a number of required protective items, including a flame-retardant jacket, pants, hood, hardhat, gloves, boots, respirator and earplugs. The Court rejected the steelworkers' argument that “clothes” under the FLSA necessarily excluded items designed and used to protect against workplace hazards. Instead, the Court found the term “clothes” to encompass items that are integral to job performance, which includes protective clothing. The Court noted that this definition “leaves room” for distinguishing between clothes and other items that may be worn, such as equipment or devices.

Once the Court concluded that the time spent donning and doffing protective gear constituted time “changing clothes,” the next question was whether all the items of protected gear were clothing items. The Court held that most of the items, including the jacket, pants, boots, and gloves, constituted clothing. However, the Court found that three items of the protective gear (earplugs, safety glasses and respirator) were not clothing. However, rather than adopt the Seventh Circuit's rationale that these items took so little time to put on that they were *de* and not compensable, the Court announced that the correct analysis was whether the majority of time spent was on clothing or non-clothing items. Since the steelworkers spent the majority of their time donning and doffing clothing items, the time as a whole was non compensable under the FLSA. The Court also assumed, without comment, that the CBA in question did exclude time changing clothes.

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Conclusion

Where a CBA excludes time spent changing clothes, “clothes” has an expansive definition that may include protective gear intended to protect against workplace hazards. If the vast majority of time is spent on clothing items, then the entire time period, including that spent on non-clothing items, is non compensable.