

E*Alert

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Employers are Required to Pay Employees for time spent “donning” and “doffing” Protective Equipment and Walking to their Workstations under the FLSA

By Oyvind Wistrom, Esq.

Workers must be paid for the time they spend walking between their workstations and the locker rooms where they “don” and “doff” protective gear, the U.S. Supreme Court ruled in *IBP, Inc. v. Alvarez*, 546 U.S. ___ (2005) and *Tum v. Barber Foods, Inc.*, 546 U.S. ___ (2005). In its first decision under Chief Justice John Roberts, the Court also concluded that workers at a different facility were required to be paid for some of the time they spent waiting at their workstations to receive and return equipment.

The consolidated case involved two separate disputes. The first involved a dispute with beef slaughterers and processing workers at a Tyson Foods facility in Washington. The Ninth Circuit Court of Appeals, which covers California, Oregon, Washington, Montana, Idaho, Arizona, Alaska, Hawaii and Nevada, had ruled that in cases where federal law entitles workers to be paid for clothes-changing time, the employees also must be paid for the subsequent walk to their workstations.

The second dispute involved Barber Foods Inc., which ran a chicken-processing plant in Maine. Twenty workers claimed they were required to arrive 15 to 30 minutes early to prepare for their shifts because there were typically significant delays in receiving their protective gear. The First Circuit Court of Appeals, which covers Maine, New Hampshire, Massachusetts and Rhode Island, had rejected the workers’ bid for compensation.

The two cases required the Supreme Court to analyze the provisions of the Fair Labor Standards Act (“FLSA”), which require employers to compensate employees for all work time, and the Portal-to-Portal Act of 1947, which

amended the FLSA to generally exclude from compensation the time employees spend traveling to their work stations.

Justice John Paul Stevens, writing for the unanimous Supreme Court, found that donning and doffing gear were “integral and indispensable” parts of the jobs at issue and that the employees’ workday began once the workers start putting on their equipment. As a result, the Court ruled that the employees at the Tyson facility were entitled to be paid, not only for their clothes-changing time, but also for the subsequent walk to their workstations.

With respect to the Barber Foods dispute, the Court held that the Barber Foods workers should be compensated for any time spent waiting after receiving their first piece of gear at the start of their shift. The Court concluded, however, that the time waiting for the first piece of equipment was a “preliminary activity” and was not compensable under the FLSA.

This decision highlights the intricacies and nuances of the FLSA. While employees must be paid for donning and doffing equipment which is integral to the performance of the employees’ duties, employees are not required to be paid for the time they spend waiting to receive their first piece of equipment. As a practical matter, employers should locate essential protective equipment in close proximity to the employees’ workstations and ensure that employees wait to don their protective equipment until just prior to their scheduled work times.

If you have any questions about the issues raised by this e-alert, please feel free to contact Oyvind Wistrom at (414) 273-3910 or by e-mail at owistrom@lindner-marsack.com

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