

Donning and Doffing:
U.S. Supreme Court Clarifies Compensable Time for Preparatory and Concluding Activities

By Geoffrey M. Boodell

In two consolidated and closely watched cases, the U.S. Supreme Court unanimously rendered a decision on November 8, 2005, that serves as a poignant reminder to employers of the importance of remaining vigilant on wage and hour issues. The decision in both cases involved whether workers should be paid for the time spent putting on personal protective equipment (“donning”), walking from the changing area to the production area, and for the time spent removing the protective equipment (“doffing”) following the end of the work shift. *IBP, Inc. v. Alvarez* and *Yum v. Barber Foods, Inc.*, U.S. LEXIS 8373 (November 8, 2005).

Employees at IBP and Barber Foods sued their employers for violations of the federal Fair Labor Standards Act (“FLSA”). The FLSA requires employers to compensate employees for all hours worked. However, the Portal-to-Portal Act creates an exception to the FLSA for activities that are preliminary or postliminary to the principal activity of an employee, unless the activity is an integral or indispensable part of the principal activity. Both employers required their employees to don a set of protective gear, walk to their work stations, and be ready to work before their paid shifts began.

Facts of the Cases.

In *IBP v. Alvarez*, a class of workers at a meat “kill and processing plant” in Pasco, Washington sued for violations of the FLSA. IBP standards required workers to don protective garments prior to each shift before clocking in, and expected workers to clock out to remove garments for breaks, lunches, and at the end of each shift. In following this policy, IBP reduced the daily work time to seven hours and fifty-six minutes to account for the “clothes time.” At trial, the district court held that the FLSA required IBP to compensate its employees for all time spent donning and doffing equipment because wearing the equipment is integral and indispensable to the employees’ jobs. Furthermore the court held that IBP must compensate its employees for time spent walking to and from work stations, stating that the work day begins after the first act of compensable work (donning the equipment). The Ninth Circuit Court of Appeals agreed with the district court’s ultimate conclusions and affirmed the decision. The Ninth Circuit did, however, distinguish between the burdensome donning and doffing of elaborate protective gear (which is compensable) and the time spent donning and doffing non-unique gear such as hard hats and safety goggles (which is not compensable). The Ninth Circuit held that the time employees spent donning and doffing non-unique protective gear was not compensable because it was “*de minimis* as a matter of law.”

In *Tum v. Barber Foods*, a class of workers at a poultry processing plant in Portland, Maine sought compensation for time spent donning and doffing protective equipment and the time spent walking from the location where the gear is obtained to the production floor. At trial, the district court ordered Barber Foods to compensate its employees for time spent donning and doffing equipment because wearing the equipment is required and is integral and indispensable. However, the district court held that donning and doffing equipment does not start or end the work day. Thus, walking to and from areas where employees received equipment was exempted under the Portal-to-Portal Act. The First Circuit Court of Appeals affirmed and rejected the employees’ arguments that donning equipment starts the workday and doffing ends it. The First Circuit also found that the Portal-to-Portal’s exemption extended to time spent waiting in line for equipment. Due to the conflicting decisions between the Ninth Circuit and the First Circuit, the two cases were consolidated for hearing before the U.S. Supreme Court.

The U.S. Supreme Court's Decision.

In a rare unanimous decision, the U.S. Supreme Court affirmed the Ninth Circuit and affirmed in part, reversed in part, the decision of the First Circuit. Specifically, the Supreme Court held that the donning and doffing of unique personal protective gear is "integral and indispensable" to the employees' work, and thus time spent donning and doffing is compensable. Likewise, the Supreme Court held that the time spent walking to and from the production floor after donning and before doffing, as well as the time spent waiting to doff, are equally compensable. However, the Supreme Court also held that the time waiting to don – time that elapses *before* the principal activity of donning integral and indispensable gear, was not compensable under the facts of the *Tum* case.

The Impact of the U.S. Supreme Court's Decision on Washington State Wage & Hour Laws.

Thankfully, the U.S. Supreme Court's decision is consistent with long-standing Washington State wage and hour laws. In Washington, preparatory and concluding activities are compensable "hours worked" when they are "integral or necessary" to the performance of the job. Those duties performed in readiness and/or completion of the job are considered to be compensable "hours worked." When an employee does not have control over when and where such activities occur, the Washington State Department of Labor and Industries takes the position that such activities shall be considered as "hours worked." These activities may include donning and doffing of personal protective gear; counting money in a register before or after a shift; preparing equipment for the day's operation, *i.e.*, greasing, fueling, warming up vehicles; cleaning vehicles or equipment; and similar activities.

What Does This Mean For Employers?

For years, employers have been faced with inconsistent U.S. Department of Labor opinions and varied court decisions regarding what is compensable work time. The U.S. Supreme Court's added clarity should allow employers to better manage their practices and the related costs and risks under the FLSA and state law. Although this decision primarily impacts employers in the manufacturing and healthcare industries, it also serves as a reminder to all employers of the importance of monitoring wage and hour issues and reviewing current practices. Little things can unfortunately mushroom to enormous proportions – a few minutes a day resulted in multi-million dollar verdicts in the two cases! A thorough review of your overtime policies and procedures, to include meal and rest periods, and employee classification as exempt or non-exempt, can help reduce your organization's risk of costly wage and hour claims.

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