



Don & Doff — On and Off: Wage and Hour Compliance

By M. Edward Taylor

Employers continue to confront an increasing number of wage and hour lawsuits with the attendant risk of liability for unpaid wages and overtime, liquidated damages, and attorneys' fees. Lawsuits often include claims for compensation for time spent before and after a shift "donning" and "doffing" specialized clothing or equipment. In the recent case of *Bamonte v. City of Mesa*, 2010 U.S. App. LEXIS 6188 (9th Cir. 2010), the U.S. Court of Appeals for the Ninth Circuit gave a rare win for employers when it ruled that police officers were not entitled to be compensated for time donning and doffing their uniforms and police equipment.

The Facts

The City of Mesa, Arizona had a long-standing practice that its police officers could don either at home or at the police station their required uniforms and specialized equipment including a holster, weapon, baton, handcuffs, chemical spray and radio. A group of officers filed suit claiming they were entitled to compensation for time spent donning and doffing their uniforms and equipment, both when done at home and when done at the station. The federal District Court granted summary judgment in favor of the City, ruling that the time was not compensable. The officers appealed and the Court of Appeals affirmed the lower court's decision.

The Legal Issue

Although the decision addresses directly only the narrow issue of whether the time spent by police officers donning and doffing clothing and special equipment is compensable, it provides valuable guidance for employers as to when time spent by employees on work-related activities before or after a shift must be compensated.

The Court's Decision

The Court undertook a detailed review of the statutes and case law addressing donning and doffing, including the Portal-to-Portal Act of 1947, which relieves an employer of the duty to pay employees for activities that are preliminary or postliminary to the principal activities of a given job. The test of whether such activities are compensable is whether they are integral and indispensable to the principal work activities. The Court noted that in a number of cases donning and doffing special clothing and equipment was an integral and indispensable part of the job, such as in meat-packing plants where there are regulations specifying that clothing must be changed and equipment cleaned at the facility.

Applying these standards to the Mesa police officers, the Court concluded that though donning uniforms and police equipment were activities required by the employer, the activities did not have to be performed at the workplace, such that the time spent was not part of the continuous workday. The Court therefore held that the time spent was not compensable, which was consistent with a 2006 Department of Labor advisory memorandum to the same effect.

The Court performed an alternative analysis of the case under the three factor test the Ninth Circuit had developed in other cases. This analysis considers whether the activity is "work," if so whether it is integral and indispensable to the primary work activity, and, if so, whether the time spent was de minimis. All three factors must be satisfied for the time to be compensable. The Court concluded that because the employer did not require that the donning and doffing be done on its premises, the activity was arguably not work. It went on to conclude, however, that even if the activity was "work" because the uniforms and special equipment were required by the employer, and though the uniform and equipment were themselves integral to the job, the donning and doffing was not integral because it could be done at home. This crucial fact was held to distinguish the case from cases involving a meat-packing plant or a silicon chip manufacturing in which either law or the employer's rule required that donning and doffing be done at the work site.

Lessons for Employers

- Unless absolutely essential to the safe or effective performance of the job, do not require employees to change into specialized clothing or equipment at the workplace, and instead allow them the option of changing at home or the workplace
- If circumstances require donning and doffing of clothing or equipment at the workplace, and the equipment is other than generic equipment such as a hard hat or eye protection for which the time to don and doff is *de minimis*, then the time spent must be recorded and compensated
- Be vigilant in ensuring that all work time is properly recorded and compensated at either straight time or overtime rates, as applicable. Activities controlled or required by the employer and pursued for the benefit of the employer are generally compensable
- Beware of other common wage and hour pitfalls: misclassification of non-exempt employees as exempt (merely because an employee is paid on a salary basis does not make him/her exempt); allowing or requiring off-the-clock work; not compensating for missed breaks or meal periods that are interrupted by work; rounding time clock minutes only in favor of the employer; and improper docking of time or taking pay deductions because of rule infractions, breakage, or shortages

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