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LABOR AND EMPLOYMENT BULLETIN

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SUPREME COURT: DONNING, DOFFING, AND WALKING TIME MAY BE COMPENSABLE

Yesterday the United States Supreme Court unanimously ruled that time spent changing into and out of protective gear, and walking between a changing area and the work area, can sometimes be compensable time under the Fair Labor Standards Act ("FLSA").

Under the FLSA, employers generally are not required to pay employees either for time spent changing clothes (referred to as "donning" or "doffing") or for time spent walking to and from their work stations at the beginning and end of the work day. However, time spent changing clothes must be compensated if it is an "integral" and "indispensable" part of the employee's principal activities, such as when the employee is putting on and taking off required or protective clothing or equipment. Likewise, time spent walking to or from a work area is generally compensable if it occurs after the start of the workday.

The plaintiffs in the case before the Supreme Court were employees in the poultry industry who were required to wear certain protective clothing or equipment for safety and sanitation purposes. Applying the exception discussed above, the Court held that the time the plaintiffs spent changing into their protective gear and walking to their workstations was compensable. The Court wrote that "the walking time in dispute here . . . is more comparable to time spent walking between two different positions on an assembly line" than to non-compensable, pre-work walking time. At the same time, the Court said that time spent waiting

in line to receive the equipment was not compensable, nor was the time spent donning non-unique gear, such as hard hats, ear plugs, and safety glasses.

Employers can takes steps to reduce the impact of this ruling, such as by moving the location where employees change clothes or by reducing the number of hours worked to compensate for the time spent walking. The FLSA is a very technical statute, however, and employers should seek counsel before implementing any major changes.

The case is *IBP, Inc. v. Alvarez*, No. 03-1238 (November 8, 2005).

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