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Donning and Doffing and Changing Clothes: The Supreme Court Wades Through the Meaning of Everyday Terms

By Bethany C. McCurdy

We are all familiar with the seemingly endless examples of politicians and lawyers who torture the English language in attempts to parse out different meanings from words that seem glaringly obvious to everyone else - for example, what does "is" really mean? Well, this past Monday it was the Supreme Court's turn to apply such an analysis in a case that turned on the meaning of the phrase "changing clothes."

The case, [*Sandifer v. United States Steel Corp.*](#), 571 U.S. ____ (2014), involves an analysis of section 203(o) of the Fair Labor Standards Act, which provides that time spent "changing clothes" is compensable *unless* otherwise agreed to through collective bargaining. In *Sandifer*, the collective bargaining agreement between the employer and the employees' union evoked the 203(o) exception and specified that time spent changing clothes at the beginning and end of the work day (referred to as donning and doffing) was not compensable.

Sandifer involved an attempted class action comprised of some 800 current and former steelworkers (the "Steelworkers") who sought backpay for their time spent donning and doffing twelve items at the beginning and end of the workday: a flame-retardant

jacket, pants, a hood, a hardhat, a snood, wristlets, work gloves, leggings, boots, safety glasses, earplugs, and a respirator. While the Steelworkers' collective bargaining agreement contained a clause stating that "changing clothes" was not compensable time, the Steelworkers challenged the application of the section 203(o) exception to the aforementioned twelve items, arguing their time donning and doffing those items did not qualify as "changing clothes" under section 203(o), making that time compensable. (The employees' union was not a party to the case and was not challenging the provision in the collective bargaining agreement.)

In evaluating the Steelworkers' claim, the Court necessarily had to determine what the word "clothes" meant in the context of section 203(o). After consulting dictionaries and analyzing the term in its historical context, a unanimous Court ultimately determined the everyday, ordinary meaning of the word "clothes" applied - specifically that "clothes" denotes an item that is designed and used to cover the body and is a commonly regarded item of dress.

The Court rejected the Steelworkers' position that the section 203(o) exception should not include items having a specific, work-hazard-related protective function, noting that section 203(o) provides an exception with regard to changing clothes only when that activity constitutes "an integral and indispensable part of the principal activities for which covered workmen are employed." The Court further noted that protective gear is the only clothing that is integral and indispensable to employees in many occupations and that adopting the steelworkers' position would render the section 203(o) exception meaningless. The Court also rejected the employer's proposed definition of "clothes," which was that "clothes" meant the entire outfit an employee puts on to get ready for work.

The Steelworkers also urged the Court to define the word "changing" in the phrase "changing clothes" to mean the actual substitution of one item for another of the same type, such as when one changes a tire or a diaper. The Steelworkers' position was that they did not "change" their clothes, but rather placed their protective gear over their street clothes. Thus, this time should be excluded from section 203(o). The Court rejected that argument as well, noting that section 203(o) was implemented to increase predictability with regard to compensability of time spent changing clothes. If the Steelworkers' limited definition were adopted, then this desired element of predictability would be obliterated. The Court further noted that whether an employee's conduct was compensable could simply hinge upon something as minimal as whether or not he changed out his t-shirt. The Court refused to adopt that position and held that "changing clothes" includes time spent altering one's dress.

Applying its analysis, the Court examined whether the specific items at issue qualified as "changing clothes" within the scope of section 203(o). The Court quickly disposed with nine items (a flame-retardant jacket, pants, a hood, a hardhat, a snood, wristlets, work gloves, leggings, and steel-toed boots), concluding that they clearly fit within the definition of "clothes." For example, a hardhat is simply a type of hat, and steel-toed boots are just a type of boot. While the particular details of each item were inconsequential to the analysis, the Court nonetheless provided analogies of certain items, such as comparing a "snood" to what skiers would refer to as a "balaclava" (a comparison that no doubt caused more confusion than clarification).

The Court considered the remaining three items - safety glasses, ear plugs and a respirator - to be outside the definition of clothes. Thus the final question became whether the time spent donning and doffing such items should be deducted from the non-compensable time. In considering this issue, the Court measured whether the time period at issue could *on the whole* be characterized as time spent changing clothes. As a result, if a majority of the time spent is putting on or taking off equipment or non-clothes items, then the entire period would not count as time spent changing clothes.

Likewise, if *most* of an employee's time is spent donning and doffing clothes, as that term was defined by the Court, the minimal inclusion of non-clothing items will not disqualify it from section 203(o). The Court reasoned that any other outcome would transform federal judges into "time-study professionals." Accordingly, the Court agreed with the decisions of the district court and court of appeals, both of which held that the time spent donning and doffing non-clothes items was "minimal" and therefore the entire time fell within the scope of Section 203(o).

For employers in unionized settings who have collectively bargained over whether to include the section 203(o) exception in their collective bargaining agreement, this decision provides a level of consistency and predictability when it comes to the application of collectively bargained terms regarding donning and doffing. And, for those employers with such collectively bargained provisions who were nonetheless facing challenges or potential challenges from employees and former employees seeking back wages, the Court's decision may provide some welcomed relief.

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