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## The Waiting Game - On or Off the Clock?

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Is the time spent waiting to go through a security checkpoint at the end of the workday compensable time? This is the question that was presented to the Supreme Court last week when it ruled unanimously that the time warehouse employees spent waiting in line and passing through a security check before leaving the workplace at the end of the day was not compensable time.

The case, [Integrity Staffing Solutions, Inc. v. Busk](#), decided December 9, 2014, involved hourly warehouse employees who pulled and packaged items for delivery for Amazon.com. At the end of their shift, employees were required to go through a security screening in which they had to remove their wallets, keys, and belts before passing through a metal detector. The screenings were meant to prevent and detect employee theft, and the entire process of waiting in line and going through the checkpoint took approximately 25 minutes each day. Only after employees went through the screenings were they allowed to exit.

Two Integrity Staffing Solutions employees, Jesse Busk and Laurie Castro, sued, claiming that the Fair Labor Standards Act ("FLSA") required that they be paid for the time spent waiting and going through the security screening because the checks were conducted to "prevent employee theft" and were "solely for the benefit of the employers and their customers."

A federal district court initially dismissed their complaint on the

grounds that the screenings occurred after the shift and were not "an integral and indispensable part" of the work the employees performed. On appeal, a federal appellate court disagreed and reversed the dismissal, finding that time spent engaged in activities after the end of an employee's shift may be compensable if the activities are necessary to the principal work and performed for the employer's benefit. Specifically, because the screenings were required by the employer and conducted to prevent employee theft, the activities were, according to the appellate court, necessary to the employees' primary activities and to the benefit of the company, making them compensable.

After the FLSA was enacted in 1938, a flood of litigation followed based on courts' broad interpretations of the FLSA's many undefined terms, such as "work" and "workweek." Some of this litigation resulted in employers being found liable for back wages and overtime for any time during which employees were required to be on an employer's premises. In response, Congress passed the Portal to Portal Act, which, for our purposes, exempted employers from liability under the FLSA for activities that are "preliminary to or postliminary to principal activity or activities." The Supreme Court has interpreted the term "principal activity or activities" to include those activities that are an "integral and indispensable part of the principal activities." Thus, the Supreme Court's analysis here came down to two basic questions: what does "integral and indispensable" mean, and what test is used to decide that question?

According to the Court, an activity is "integral and indispensable to the principal activities" if it is "an intrinsic element of those activities and one with which the employee cannot dispense if he is to perform his principal activities." In other words, was the activity (the security screening) a vital part of the job the employee was hired to perform (pulling items in the warehouse)? In this case, the Court answered that question with a resounding no.

In its analysis, the Court also looked to other cases for comparison. For example, the Court previously held that time meatpackers spent sharpening their knives was compensable, reasoning that dull knives would ultimately slow assembly line production and negatively affect their primary activity of meat cutting. Similarly, the time spent changing clothes and showering after working with toxic chemicals in a battery plant is compensable because it was indispensable to the work being performed. By way of contrast, the time spent by poultry plant employees donning protective gear [was not compensable](#) as it was considered to be "two steps removed from the productive activity on the assembly line." The Court also stated that its conclusion was supported by Department of Labor regulations that explain that an activity regularly performed such as "checking in and out and waiting in line to do so, changing clothes, washing up or showering, and waiting in

line to receive pay checks" are "preliminary" or "postliminary" and are not compensable unless the activity is directly tied to an employee's ability to perform his principal job activities. See 29 C.F.R. §790.7(g).

Here, because the time spent by employees engaged in security screenings was not integral or indispensable to the employees' warehouse work - the Court noted that the job for which the employees were hired was not to undergo security screenings, but rather "to retrieve products from warehouse shelves and package those products for shipment to Amazon customers" - that time was not compensable. As the Court noted, the warehouse positions could still exist even if the employer eliminated the security screenings entirely.

The fact that the employer required the screenings was also of no consequence. In its decision reversing the district court, the appellate court relied heavily on the fact that the employer mandated the screenings in finding that the time was compensable. The Supreme Court flatly rejected this analysis and emphasized the nature of the test is whether the activity in question is "indispensable to the performance of productive work," and not whether it was required by the company. As the Court noted, if all it took to deem an activity to be compensable was that it was required by an employer or benefitted an employer in some way, then a vast wave of previously non-compensable tasks, such as washing a uniform or walking to the factory door, could suddenly become compensable time.

This case represents a strong repudiation of any argument that pre-shift activities that are not integral and indispensable are compensable, regardless of employer mandate or benefit. The case shows that the Court was unwilling to broaden the scope of compensability beyond those that are integral and indispensable to the performance of the job. Employers should not however, take the opinion as an invitation to implement tasks or activities or modify pay practices without careful analysis to determine whether the activity is compensable under the FLSA. The final determination will depend on the facts of your particular situation.

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