



Supreme Court Rules Time Spent Preparing to Work Starts the Time Clock

Must a company pay its non-exempt employees to put on and take off uniforms or safety equipment before and after their shifts? Must employees be paid for time spent walking to and from their assigned work stations after putting on and before taking off their gear? Are employees entitled to be paid for time spent waiting to change in and out of specialized gear? The U.S. Supreme Court answered these questions on November 8, 2005 in its decision in *IBP, Inc. v. Alvarez*.

In *IBP, Inc. v. Alvarez*, the Supreme Court considered appeals from two different cases. In one, *IBP, Inc.* was found to have violated the Fair Labor Standards Act (FLSA) by not paying meat processing employees for time spent walking between changing areas and their assigned work sites in connection with donning (putting on) and doffing (taking off) specialized protective gear necessary for their work. In the second case, the lower court held *Barber Foods, Inc.* was in compliance with the FLSA when it did not pay meat processing employees for time spent donning and doffing protective gear or for walking to and from their work sites after getting dressed. The *Barber Foods* employees also unsuccessfully sought pay for time spent waiting to change in and out of their gear.

Donning and Doffing

The Department of Labor has adopted the continuous workday rule, which means that the "workday" is generally defined as "the period between the commencement and completion on the same workday of an employee's principal activity or activities." 29 C.F.R. § 790.6(b). Time spent on activities before (preliminary to) an employee's principal activity, or after (postliminary to) the employee's principal activity, generally is not considered compensable time. "[T]o the extent that activities engaged in by an employee occur after the employee commences to perform the first principal activity on a particular workday and before he ceases performance of the last principal activity on a particular workday," the time is compensable as work time. 29 C.F.R. § 790.6(a). The *IBP* and *Barber Foods* cases highlighted a difficult issue for both employers and the courts: when does an employee's principal activity begin and end?



It has long been settled that donning and doffing of specialized protective gear “performed either before or after the regular work shift, on or off the production line, are compensable . . . if those activities are an integral and indispensable part of the principal activities” for which the workers are employed. In the *IBP* and *Barber Foods* cases, workers were required to wear specialized protective gear necessary to protect their safety and ensure a safe and hygienic work environment. In the *IBP* case, the lower courts ruled that donning and doffing of protective gear unique to the job was integral and indispensable. *IBP* did not appeal that ruling. In the *Barber Foods* case, a jury ruled that time spent donning and doffing was *de minimis* and non-compensable. This proved to be the easiest issue for the Supreme Court to resolve – the court ruled that employees at both companies who were required to wear specialized protective gear were entitled to be paid for time spent donning and doffing the gear.

Walking Time

The more difficult issue was whether the time employees spent walking from the changing areas to their work sites at the beginning of their shifts, and back from their worksites at the end of their shifts, was compensable time. The employers argued that even if donning and doffing of protective gear was integral and indispensable to the employees’ performance of their work, it did not start the time clock running under the DOL’s continuous workday rule. The employees claimed that because donning and doffing time was compensable, all time after donning their uniforms and safety equipment, including time walking to and from their worksites, was compensable time.

The Supreme Court agreed with the employees. It ruled the “walking in this case occurs after the workday begins and before it ends,” making it compensable work time. The court reasoned that “the few minutes spent walking between the locker rooms and the production area are similar to the time spent walking between two different workplaces on the disassembly line.” In finding the walking time to be compensable time, the Supreme Court ruled that “any activity that is ‘integral and indispensable’ to a ‘principal activity’ is itself a ‘principal activity’” for purposes of calculating an employee’s work hours.



Waiting Time

The final issue the Supreme Court addressed was whether the employees were due pay for time spent waiting to don and doff required protective gear. Barber Foods argued the waiting time was “preliminary or postliminary activity,” which would not ordinarily be compensable work time under the Portal to Portal Act. The court agreed with the company in part, ruling that “time employees spend waiting to don their first piece of gear that marks the beginning of the continuous workday” is not compensable time under the FLSA. However, the court decided that time spent waiting to take off required protective gear at the end of the workday is compensable time.

Practical Considerations

Employers should carefully examine their pay practices to ensure compliance with the rules detailed above. Requiring employees to wear uniforms or specialized gear will not always trigger a duty to pay employees for their time donning and doffing the items. The nature of the job, the nature of the gear, and the time it takes to don and doff will dictate whether time spent will be considered part of the workday. Employers requiring use of specialized gear may need to relocate time clocks or take other appropriate steps. When donning and doffing is part of the workday, time expended by the employee in getting to his or her workstation will generally be considered work time as well. Careful planning and structuring of the workday can also minimize potential accrual of overtime based on time spent donning and doffing work gear.

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