

Supreme Court Rules Security Screenings Not Compensable

On December 9, the Supreme Court unanimously held that employers do not have to pay workers for time they spend clearing post-shift security checks, making FLSA compliance easier for employers by clarifying what constitutes compensable time. Given the widespread use of workplace security screenings, the Court's decision will have far-reaching implications for employers and employees alike.

Background

The federal Fair Labor Standards Act (FLSA) generally requires covered employers to pay non-exempt employees a minimum hourly wage for the hours they work and overtime compensation when they work in excess of 40 hours in a workweek. Although the FLSA did not define "work" or "workweek," the Portal-to-Portal Act of 1947 and subsequent court decisions limited the scope of compensable work, making clear that the FLSA does not require employers to pay for time spent on activities that occur before or after the employee's regular working hours ("preliminary" or "postliminary" activities) unless they are an integral part of the employee's principal job activities.

In today's workplaces, pre-shift and post-shift security screenings are commonplace — either for employee safety reasons or as an anti-theft measure. Metal detectors and bag checks in both public and private spaces have become routine. Both the US Courts of Appeals for the Second and the Eleventh Circuits have held for some time that the FLSA does not require employees to be paid for time spent undergoing security checks. Last year, in [Busk v. Integrity Staffing Solutions, Inc.](#), the Court of Appeals for the Ninth Circuit took a different view. Earlier this year, the Supreme Court agreed to review that decision and weigh in on the compensability of security screenings. (See our [March 7, 2014 For Your Information.](#))

Supreme Court Weighs In

Integrity Staffing Solutions provides warehouse workers to fill orders for Amazon.com customers throughout the country. As part of a loss prevention program, Integrity Staffing Solutions required workers employed at two Nevada warehouses to undergo security screenings (including walking through a metal detector and bag



searches) as they left the facilities at the end of their shifts. Because the screenings took place after the workers clocked out, they were not paid for the roughly 25 minutes they allegedly spent each day to clear security. The workers filed a putative class action lawsuit against Integrity Staffing Solutions seeking to be paid for screening time that they claimed was compensable under the FLSA and Nevada labor laws.

Federal Court Rulings

In 2011, a federal district court in Nevada dismissed the case against Integrity Staffing Solutions, concluding that time spent going through post-shift security checks was not compensable under the FLSA because it was not integral and indispensable to the employees' principal job activities. In April 2013, the Ninth Circuit reversed the lower court's decision, holding that mandatory post-shift security clearances — conducted for the employer's benefit in preventing theft — were an integral and indispensable part of the employees' principal job activities. Because clearing security was "necessary" to the warehouse employees' primary work, the Ninth Circuit concluded, the time spent waiting for and undergoing security screenings could be compensable under the FLSA.

An Uptick in Lawsuits

The Ninth Circuit's decision spawned a wave of FLSA litigation over employee security screenings, including class and collective actions against well-known employers.

Supreme Court Ruling

The question presented on appeal was whether time spent in security screenings is compensable under the FLSA, as amended by the Portal-to-Portal Act. On December 9, the Supreme Court said no. In a unanimous [opinion](#) (*Integrity Staffing Solutions Inc. v. Busk et al.*), the Court reversed the Ninth Circuit's ruling and held that the security screenings conducted at Amazon.com warehouses were non-compensable postliminary activities.

In reaching that conclusion, the Court focused on two criteria — (1) the nature of the activity for which compensation was sought (time spent waiting to undergo and undergoing security screening), and (2) the relationship of that activity to the employee's principal job activities. The Court found that the purpose for which the warehouse workers were employed was to retrieve and package products for shipment to Amazon customers — not to undergo security screenings — and that security screenings could have been eliminated without impairing the employees' ability to fill on-line orders. For those reasons, the screenings were not integral and indispensable to the warehouse workers' principal job activities, and thus time spent clearing security was not compensable under the FLSA.

The Court noted that the Ninth Circuit erred by focusing on whether the employer had required the screenings for its benefit. Rejecting the claim that time spent clearing security was compensable because the employer could have reduced it to a *de minimis* amount, the Court said that such claims are "properly presented to the employer at the bargaining table, not to a court in an FLSA claim."

In Closing

In view of the widespread use of security screenings in today's workplaces, the Supreme Court's decision can be expected to have far-reaching implications for both employers and employees. While the case concerned post-shift screenings of warehouse workers, the Court's ruling will affect a much broader range of employers and potentially tens of thousands of workers who routinely pass through security clearances each day.

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