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Jay P. Lechner and Zascha Blanco Abbott
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SECURITY SCREENING TIME HELD NONCOMPENSABLE UNDER THE FLSA

On December 9, 2014, the United States Supreme Court held unanimously that time spent by warehouse employees in security screenings following their work shifts is not compensable under the Fair Labor Standards Act (“FLSA”), as amended by the Portal-to-Portal Act of 1947. This ruling, reached in the case *Integrity Staffing Solutions, Inc. v. Busk*,¹ reversed the Ninth Circuit’s conclusion that such time could be compensable.²

The *Busk* lawsuit was filed by former hourly employees of Integrity Staffing who worked in warehouses filling Amazon.com orders.³ They alleged that after their shifts, they were required to spend up to 25 minutes passing through a theft-deterrent security system.⁴ According to the plaintiffs, Integrity Staffing’s failure to pay them for time spent waiting for and undergoing the security screenings violated the FLSA and Nevada law.⁵

The district court dismissed the complaint for failure to state a claim, holding that the security screenings were noncompensable “postliminary” activities under the Portal-to-Portal Act, which exempts employers from liability for claims arising from “activities which are preliminary to or postliminary to [the] principal activity or activities” the employees are employed to perform.⁶ On appeal, the Ninth Circuit reversed, recognizing that postliminary activities may be compensable if they are “integral and indispensable” to an employee’s principal activities, which the court interpreted as “necessary to the principal work performed and done for the benefit of the employer.”⁷ In light of the plaintiffs’ allegations that the purpose of the screenings was to prevent employee theft, the Ninth Circuit held that the screenings were “necessary” to the plaintiffs’ primary work as warehouse employees and were done for Integrity Staffing’s benefit.⁸

The Supreme Court reversed, holding that the security screenings are noncompensable postliminary activities.⁹ The Court began its analysis by noting that it has consistently interpreted the phrase “principal activity or activities” as including all activities which are an “integral and indispensable part of the principal activities.”¹⁰ Looking to the definitions of those words, the Court clarified that an activity is “integral and indispensable to the principal activities that an employee is employed to perform 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.”¹¹ Activities falling within the scope of this definition are compensable under the FLSA.

The Court found that the principal activity the employees were employed to perform was retrieving products from warehouse shelves and packaging them for shipment—not going through security screenings.¹² Moreover, security screenings were not “integral and indispensable” to this principal activity in that they were not an “intrinsic element” of retrieving and packaging products, and Integrity Staffing could have done away with the screenings entirely without impacting the plaintiffs’ ability to perform their principal job duties.¹³

The Court held that the Ninth Circuit erred by emphasizing that the security screenings were required by Integrity Staffing.¹⁴ If the test turned on whether an employer required an activity, it would result in an overbroad interpretation and include as compensable such conduct that the Portal-to-Portal Act was created to address (e.g., walking from a time clock to a work station).¹⁵

Further, the Court considered briefly an argument that Integrity Staffing could have reduced the security screening time to a *de minimis* amount by changing the logistics of the screening process.¹⁶ In rejecting this argument, the Court held that the ability to reduce the time spent on preliminary or postliminary activity had no bearing on the nature of the activity or its relationship to the activities that the employees were employed to perform, which is the focus of the analysis.¹⁷

The Court's decision resolves the conflict between the Ninth Circuit and prior decisions from other circuits and provides clear guidance for parties as to the compensability of preliminary and postliminary security screenings. Additionally, the ruling will likely deter future class action litigation related to time spent in security screenings.

~ By Allison M. Gluvna, Jackson Lewis P.C.

Endnotes

1. *Integrity Staffing Solutions, Inc. v. Busk*, No. 13-433 (U.S. Dec. 9, 2014).
2. 713 F.3d 525 (9th Cir. 2013).
3. *Integrity Staffing*, No. 13-433, at 1.
4. *Id.* at 2.
5. *Id.*
6. *Id.*
7. *Id.* at 3.
8. *Id.*
9. *Id.* at 3, 7.
10. *Id.* at 5 (citing *IBP, Inc. v. Alvarez*, 546 U.S. 21, 29-30 (2005) and quoting *Steiner v. Mitchell*, 350 U.S. 247, 252-53 (1956)).
11. *Integrity Staffing*, No. 13-433, at 6.
12. *Id.* at 7.
13. *Id.*
14. *Id.* at 8.
15. *Id.*
16. *Id.* at 9.
17. *Id.*

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