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Duff on Hospitality Law

U.S. Supreme Court Distinguishes Between Donning and Doffing and Waiting in Line

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This blog post discusses how the recent Supreme Court ruling, Integrity Staffing Solutions v. Busk, may impact potential employee wage and hour claims for hourly employees in the future. – Greg

The Supreme Court ruled recently that employers did not need to pay employees for the time the employees spend waiting to go through a security screening to make sure they were not stealing from the company. The case is *Integrity Staffing Solutions v. Busk*. While many employers applauded this ruling they were also confused because it is initially difficult to determine how going through the security clearance is different than the requirement that you must pay certain employees for the time it takes to change in and out of uniforms or special apparel, also known as donning and doffing time. This article will explore those differences and attempt to make some sense in the distinctions.

First, the history behind the law. The Fair Labor Standards Act (FLSA) and its regulations require that employees are paid for all hours worked. The courts immediately started to broadly interpret this obligation and Congress was concerned about the financial impact on the businesses of the country. As a result, Congress passed the Portal-to-Portal Act to more clearly define what time was actually considered to be work time.

The portion of the Portal-to-Portal Act that is implicated by this opinion is the portion that discusses what activities before (preliminary) and after (postliminary) must be paid. Generally, those activities that are preliminary or postliminary to the performance of the principal activities that an employee is hired to perform must be compensated. “Principal activities” includes all activities which are an “integral and indispensible part of the principal activities.”[1] In order to be considered an “integral and indispensible” activity, it must be one that is intrinsic to the employee’s duties and one which he cannot dispense if he is to perform his principal activities.

Now that the law and terms have been defined, let’s turn to the facts of the case. The employees were hired by Integrity Staffing Solutions to work in a warehouse fulfillment center that filled orders for Amazon. The employees were responsible for receiving an order and

picking the items from the proper locations within the warehouse to fulfill the orders. Integrity Staffing Solutions required the employees to clock out from work and then stand in a line to go through security clearance – essentially a metal detector similar to those at an airport – as they left work for the day. This allowed Integrity Staffing Solutions to control the loss of merchandise through employee theft. The lines for these clearances were often long and would take as long as thirty minutes to get through. The employees sued on the basis this 30 minute wait time was actual work time and they should be paid for waiting in line. The Supreme Court disagreed.

In order to be paid for such preliminary or postliminary activity the activity must be so related to the employee's duties that the job could not be performed if the preliminary or postliminary activity did not occur. The Court decided the focus should not be on whether or not the activity was required by the employer. Instead, the focus should be whether not the activity was actually tied to the work the employee was hired to perform. For example, employees required to wear protective clothing due to the nature of their work, such as dealing with chemicals used in the battery making process, could not perform the work they were hired to do without putting on the protective clothes.[2] The same is true of the time that meat packers spend sharpening their knives.[3]

So, what does all this mean to the hospitality industry? Does it really change the rules on donning and doffing? The short answer is no, it doesn't change the rules. What it does do is make sure that employers really look at the activity and determine just how integral to the job the activity is. For example, the employer who puts a lot of emphasis on uniforms as a part of the brand (including defining the level and quality of customer service associated with the uniform) may have to pay for the time it takes to don and doff the uniform. This is true if the employer places a lot of emphasis on the public face of the uniform and the associated internal expectations of customer service created by the identity. In short, the uniform becomes a part of the job since it defines the customer service portion of the job.

In contrast, a server who wears a uniform simply as a uniform, but not as a part of the customer service brand and standards may not have to be paid for the time spent changing clothes. The server can still perform the integral functions of the position (serving food and beverages) without the uniform. It is somewhat removed from the position, unless of course the policies of the employer indicate otherwise as discussed above.

What is the takeaway? If there is a question about preliminary and postliminary requirements, take the time to look at the relationship between the activity and the job the employee was hired to perform. Be critical of the situation and candid with yourself as you analyze the situation. If there is any question, reach out to your legal counsel. Be sure that you understand the risks and benefits so that you are not facing a potential wage and hour claim.

If you have any questions or for more information regarding this ruling, please feel free to contact Greg, directly.

[1] *Steiner v. Mitchell*, 350 US 247, 252-253.

[2] *Steiner v. Mitchell*, 350 US 247, 249, 251.

[3] *Mitchell v. King Packing Co.,* 350 US 260, 262.

Tags: FLSA, Hospitality, Portal-to-Portal Act, Supreme Court