

# SUPREME COURT RULES THAT SECURITY CLEARANCES ARE NON-COMPENSABLE, HANDING SIGNIFICANT WIN TO EMPLOYERS

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The Supreme Court has now ruled in *Integrity Staffing v. Busk*, which we reported on last week. The court held that time spent by employees undergoing security clearances after completing their principal work activities is non-compensable under the Fair Labor Standards Act.

The 9-0 decision by Justice Thomas emphasized Congress's express intent in passing the Portal-to-Portal Act to reign in overly broad judicial interpretation of the Fair Labor Standards Act "in disregard of long-established customs, practices, and contracts between employers and employees, thereby creating wholly unexpected liabilities . . ." The court also found wanting the approach taken by the Ninth Circuit below, which had focused on whether the employer required the activity, noting that if this were the test, "it would sweep into [compensable] principal activities the very activities that the Portal-to-Portal Act was designed to address." The court likewise rejected the plaintiffs' argument that the security clearances should be compensable because the employer allegedly could have substantially reduced the times required for the checks but did not, forcing the employees to endure long waits. Rather, the only relevant inquiry is whether an activity is "integral and indispensable" to an employee's "principal activities." And, since the employees here can safely and effectively perform their duties without undergoing security checks, there is no need to compensate them for time spent undergoing the checks.

The court's unanimous decision hands employers a very significant victory. Not only did the court side with the employer, but it broadly reaffirmed the Portal-to-Portal Act as a limit on overreaching application of the FLSA, while creating a virtually bright-line rule that security clearances are not compensable under the statute.