SUPREME COURT POISED TO RULE ON WHETHER TIME SPENT IN SECURITY SCREENINGS IS COMPENSABLE WORK UNDER THE FLSA

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Security screenings have become a routine feature of many American workplaces. Whether in office buildings, airports, military installations, or retail facilities, employees must submit to metal detectors and other security checks on a daily basis. But does time spent in security screenings constitute work for which employees are entitled to be compensated, or is going through a security screening no different than time an employee might spend commuting or riding the elevator to the office, which obviously is not compensable work?

The U.S. Supreme Court is expected to rule shortly on this very question in *Integrity Staffing Solutions, Inc. v. Busk*. You would think that this would be a fairly straight forward question to answer, but it's not. The case turns on the Portal-to-Portal Act. Under the act, activities that are "preliminary" or "postliminary" to an employee's principal activity are not compensable unless they are both "integral" and "indispensable" to the principal activity. 29 U.S.C. § 554(a). Over the years, the courts have struggled to apply this standard to a variety of situations, resulting in a substantial and at times rather nuanced and technical body of case law.

In *Integrity Staffing Solutions*, the plaintiffs work in a warehouse fulfilling customer orders for Amazon and other Internet retailers. Before leaving the facility at the end of the day, they are required to pass through security screenings in order to prevent "shrinkage," i.e., employee merchandise theft. Allegedly, it can take up to 30 minutes to pass through the screenings at peak hours. Even though the defendants vigorously dispute this allegation, the plaintiffs insist that they should be compensated for this time.

The district court dismissed the plaintiffs' claims, relying on precedent from the Second and Eleventh Circuits. The Ninth Circuit, however, reversed, finding that the screenings were both integral and indispensable to the plaintiffs' principal activities. The Ninth Circuit distinguished the Second Circuit decision because in that case everyone — not just employees — had to be screened before entering the employer's nuclear facility, which defeated the integral element. The screenings in the Eleventh Circuit case likewise were not integral because they were mandated by

the Federal Aviation Authority and therefore did not benefit the employer, a construction contractor. In contrast, the Ninth Circuit found that security clearances at issue "were put in place because of the nature of the employee's work" and therefore were, at least as alleged in the complaint, compensable. See *Busk v. Integrity Staffing Solutions, Inc.*, 713 F.3d 525, 531 (9th Cir. 2013).

Integrity Staffing argues that reversal is necessary because the Ninth Circuit's decision violates Congress' intent in enacting the Portal-to-Portal Act. Congress did so in 1947 specifically to overturn the Supreme Court's decision in *Anderson v. Mount Clemons Pottery Co.*, which defined work under the Fair Labor Standards Act broadly to include "all time during which an employee is necessarily required to be on the employer's premises, on duty or at a prescribed work place." Going through security as part of the "egress process" is a typical postliminary activity under the act — no different from punching the clock or washing up after work under most circumstances — that Congress intended to be non-compensable. Notably, the Obama administration joined Integrity Staffing in arguing vigorously against treating security checks as compensable work, presumably, among other reasons, because doing so could significantly affect government payrolls.

At oral argument on October 8, the court and the parties struggled both with the definition of a "principal activity" compared to a post or preliminary one and with the application of the "integral and indispensable" standard — not to mention a thicket of factually specific precedents that defy easy generalization. Why is it, for example, that under existing law that standing in line to punch in is not compensable but participating in a roll call is? If a judge required her law clerks to prepare her breakfast in the morning, would that be non-compensable since it would not be integral and indispensable to their principal activities? Should it matter that the security checks at issue, unlike those in the prior cases distinguished by the Ninth, occurred at the end, not the beginning, of work shifts? We can only wait to see whether the court will be able to extract a bright-line rule from the case, which would simplify compliance for employers, or decide the matter on more narrow grounds, which may only complicate compensation requirements that are already quite technical. Either way, the consequences will be significant for employers given the ever-increasing prevalence of security checks in the workplace.