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First Roberts Court Decision Affirms 'Continuous Workday' Rule Under FLSA, But Rejects Employee Claim For Waiting Time Pay

In the first decision issued by the Roberts Court, the Supreme Court ruled yesterday in *IBP, Inc. v. Alvarez* that if time spent donning and doffing protective gear is a compensable activity under the Fair Labor Standards Act (FLSA), then so too is the time spent by employees walking between the locker room where the donning and doffing takes place and the stations where the employees perform their principal activities.

The genesis of the *IBP* decision is in the Portal-to-Portal Act of 1947, passed as an amendment to the FLSA. The Portal-to-Portal Act excepted from FLSA coverage walking to and from the place of the employee's "principal activity or activities" and work which is "preliminary or postliminary" to such principal activities. Later, however, in *Steiner v. Mitchell*, the Supreme Court interpreted "principal activity or activities" to embrace all job duties which are "an integral and indispensable part of the principal activities."

The *IBP* case was a consolidation of two separate actions concerning "principal activity" compensation. In *Alvarez v. IBP,* meat processing employees brought a collective action seeking payment for time spent donning and doffing required protective gear and for time walking from the locker room to the shop floor. In *Tum v. Barber Foods*, poultry processing employees sought compensation from their employer for similar purposes, but they also sought additional payment for time spent waiting or walking to don protective equipment. In *Alvarez* and *Tum*, the 9th and 1st Circuit Courts of Appeals respectively held that the donning and doffing of the protective clothing in those cases was an "integral and indispensable" part of both the meat and poultry processing employees' work days. The Supreme Court did not review those determinations.

But the Supreme Court did review those courts' divergent views on the walking and waiting time associated with the donning and doffing of the gear. It held that where, as in these cases, donning and doffing protective gear is integral and indispensable to employees' principal activities, a "continuous workday" mandates that the time spent by employees walking to and from their work stations on the production floor after donning and before doffing is compensable activity under the FLSA. The Supreme Court further held, however,

that the Portal-to-Portal Act excepts from the FLSA coverage the time spent waiting or walking to don the first piece of protective gear. Such time, the Court held, generally falls within the definition of non-compensable "preliminary" activities set forth in the Portal-to-Portal Act.

Nothing in the *Alvarez* decision is overly shocking or unexpected. The question remaining after the decision, however, is the extent to which donning clothing, gear, or equipment is integral or indispensable to principal activities. Employers should continue to compensate their employees for both putting on protective gear which is comparably burdensome as the gear worn by the employees in *Alvarez* and the subsequent walk to work stations. If the protective gear is less burdensome than those donned and doffed in *Alvarez,* however, then donning and doffing activities may not be compensable. In such a case, neither is the time spent walking to work stations. And no matter how burdensome the donning and doffing, employers need not compensate employees for the time they spend waiting to don protective gear under *IBP.*

If you have questions on this decision, please contact the Seyfarth Shaw attorney with whom you normally work or any attorney on our website at www.seyfarth.com.

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