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U.S. Supreme Court Says Employers Don't Have to Pay Workers for Time Spent in Security Screenings; Impact for California Employers

Many employers screen employees leaving the workplace as a means to prevent theft of merchandise or other company property. In some instances, the employees have sued, alleging that they are entitled to be paid for the time spent in these after-work security screenings. But in *Integrity Staffing Solutions, Inc. v. Busk*, No. 13-433 (Dec. 9, 2014), the U.S. Supreme Court has unanimously held that the time spent waiting for and undergoing the screens is noncompensable under the federal Fair Labor Standards Act ("FLSA"). While this decision generally is good news for employers that use security screens, it remains to be seen what impact it may have on similar claims under California state law.

111 SUTTER STREET
SUITE 700
SAN FRANCISCO
CA 94104
415 464 4300 T
415 464 4336 F

12121 WILSHIRE BLVD.
SUITE 1375
LOS ANGELES
CA 90025
310 943 8500 T
310 943 8501 F

The *Busk* plaintiffs, who worked for a company that provides staffing for Amazon.com warehouses, retrieved products from the warehouse for delivery to Amazon customers. At the end of each shift, the employer required the plaintiffs to remove their wallets, keys and belts and then pass through metal detectors. In a putative class action, the plaintiffs alleged that they were entitled to compensation under the FLSA for the roughly 25 minutes per day that they spent waiting to undergo and actually undergoing the security screenings. They argued that because the employer imposed the search requirement, and made it mandatory, they were entitled to be paid for the time. The Ninth Circuit, reversing dismissal of the plaintiffs' action, agreed that the time was compensable, mainly on the ground that the employer required the screenings.

Applying the federal Portal-to-Portal Act (29 U.S.C. § 251 *et seq*.), the Supreme Court reversed the Ninth Circuit. As the Supreme Court explained, Congress enacted the Portal-to-Portal Act in 1947 to overturn decisions that had liberally construed the terms "work" and "workweek" as used in the FLSA. In relevant part, the Portal-to-Portal Act provides that the employer need not compensate an employee for "activities which are preliminary to or postliminary to" an employee's "principal activity or activities." Relying on dictionary definitions, its past decisions, and the position taken by the United States in its amicus brief, the Court stated that a "principal activity" is an "integral and "indispensable" part of the duties the employee is employed to perform and must be "an intrinsic element of those activities and one with which the employee cannot dispense if he is to perform his principal activities."

The Court then succinctly explained that the security screenings at issue were noncompensable postliminary activities. The employer did not employ workers to undergo these screenings, and it could have eliminated the screenings entirely without impairing the employees' ability to perform their warehouse work. As such, the screenings were neither part of the employees' principal activities nor integral and indispensable to their work. The Court rejected the Ninth Circuit's contrary reasoning, explaining that the Portal-to-Portal Act does not require compensation for all activities that benefit the employer or are a required part of the job. Finally, the Court tersely dismissed the plaintiffs' argument that the employer, by taking certain steps, could have reduced the 25 minutes of screening time to a *de minimis* amount. That the employer could have reduced the time involved in the screenings does not alter the nature of the activity or its relationship to the employee's principal activities, said the Court.

While *Busk* is a win for employers under the federal FLSA, its impact on similar claims under California law is uncertain. That's because under California law, whether "work" time is compensable depends simply on whether employees are subject to the employer's "control." Thus, the *Busk* Court's analysis of whether security screenings are compensable postliminary activities does not necessarily determine the outcome under California law. Nevertheless, California courts have long relied on interpretations of federal statutes and regulations when analyzing similar state law. At a minimum, California courts will certainly be asked to decide the extent to which *Busk* affects wage claims under California law.

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