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Getting Paid for Getting Dressed: DOL Guidance on Donning and Doffing

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A recent Administrator's Interpretation from the U.S. Department of Labor helps clarify whether employers must compensate employees for time spent putting on and taking off clothing and protective equipment necessary for their jobs, referred to as donning and doffing.

Section 3(o) of the Fair Labor Standards Act (FLSA) says time spent "changing clothes or washing at the beginning or end of each workday" is excluded from compensable time under the FLSA if the time is excluded from compensable time pursuant to the express terms of or custom and practice under a collective bargaining agreement. Although this provision specifically governs unionized employees, the guidance is useful for all employers when evaluating whether employees must be paid for donning and doffing activities.

There have been several court cases analyzing what constitutes "clothing" under the Section 3(o) exemption. Donning and doffing of safety and sanitation equipment at the worksite is not covered by the exemption. So, for example, helmets, smocks, aprons, arm guards and sleeves, face shields, and impermeable gloves would probably not be "clothing" under the Section 3(o) exemption. This means employees must be compensated for time spent putting on or taking off this safety and sanitation equipment, even if they are subject to a collective bargaining agreement providing time spent changing clothes is exempt from compensable time.

Although Section 3(o) pertains to employees covered by collective bargaining agreements, the analysis in the DOL Administrator's Interpretation and the related cases is instructive for all employers. Non exempt employees must be paid for all time spent putting on or taking off safety or protective equipment necessary for their jobs at the beginning and end of the work day. Donning and doffing of clothing and washing to prepare for work or after work can also be compensable time when the donning or doffing or washing is a "principal activity." An action is a "principal activity" when it is integral and indispensable to the job. So, for example, meatpacking employees who must change into coveralls to protect their clothing in the locker room at the processing facility might be entitled to pay for the time spent in the locker room at the beginning and end of the shift.

Although it is clear that donning and doffing of safety and sanitation equipment is compensable time, employers should also be aware of the need to pay for donning and doffing of clothing. Whether or not a specific donning and doffing activity is a "principal activity" and is compensable should be analyzed carefully to avoid wage liability to employees, which can include back pay, liquidated damages (an amount equal to back pay), attorneys' fees and court costs, and injunctive relief.

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