Supreme Court to Decide When Workers Should Be Paid for Changing Their Clothes

by Christine M. Vanek on February 25, 2013

Companies often require employees to wear uniforms or other protective gear while on the job. However, whether employees should be paid for the time spent changing their clothes (referred to as donning and doffing time) has proven to be a complicated legal issue.

Under the Fair Labor Standards Act, the clock starts running on employee compensation when the worker engages in a “principal activity.” Generally speaking, courts have determined that this means that employees must be compensated for the time they spend donning and doffing required uniforms and safety gear, unless its *de minimis*.

However, the rules are different for unionized employees. Under section 203(o) of the FLSA, an employer is not required to compensate a worker for time spent “changing clothes” (even if it is a principal activity) if that time is expressly excluded from compensable time under a bona fide collective bargaining agreement.

Interpreting these two provisions has proven an arduous task for employers and courts alike. Most recently, the U.S. Supreme Court agreed to step in and address conflicts among the circuit courts. In *Sandifer v. U.S. Steel Corp*, the justices will consider a lawsuit filed by 800 steel workers who allege that they should be paid for time spent changing in and out of protective gear because it is an integral part of their job.

The case raises a number of important issues, including:

- When if at all is donning and doffing safety gear “changing clothes” within the meaning of section 203(o);
- If all of the donning and doffing is non-compensable under section 203(o), does it nonetheless constitute a “principal activity” under the FLSA and thus begin the continuous work day, so that travel time to and from an employee’s work station must be compensated; and
- Can donning and doffing, even if it is not “changing clothes” within the meaning of section 203(o), constitute a principal activity if it requires only a *de minimis* amount of time.

The Seventh Circuit Court of Appeals previously dismissed the lawsuit after finding that the time spent donning and doffing safety gear like helmets and safety glasses was not compensable. As Judge Richard Posner explained, "The glasses and ear plugs are not clothing in the ordinary sense but the hard hat might be regarded as an article of clothing and in any event putting on the glasses and the hard hat and putting in the ear plugs is a matter of seconds and thus not compensable."

This Supreme Court's decision is expected to have serious implications for employers, particularly those that require their workers to wear safety gear while on the job. We will continue to follow the case and provide updates as they become available.

If you have any questions about this case or would like to discuss the issues involved, please contact me, Christine Vanek, or the Scarinci Hollenbeck attorney with whom you work.