

Time Spent Walking Between Changing Stations and Time Clocks Not Working Time

9/23/2013

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The time that food-production workers spend walking between changing stations, where they don and doff protective gear, and a time clock is not compensable under the Fair Labor Standards Act (FLSA) if a collective bargaining agreement provides that employees are not to be paid for the time they spend changing uniforms, according to the 8th U.S. Circuit Court of Appeals.

ConAgra operated a frozen-food production facility where its hourly production and maintenance workers have consistently been represented by unions and covered by a collective bargaining agreement.

In order to ensure that the facility remains sanitary, ConAgra requires employees to wear protective gear that was kept at the facility and provided and laundered by the company. After putting on their uniforms, the workers walk to a time clock to record their start time. At the end of the day they punch out at the time clock and then walk to the changing stations to remove their uniforms.

ConAgra did not pay workers either for the time they spent changing into and out of uniforms or the time it took them to walk between the changing station and the time clock. The collective bargaining agreement stated that employees would not be paid for the time they spent changing clothes.

Two employees sued on behalf of themselves and all similarly situated workers, claiming that ConAgra violated the FLSA by failing to pay them for time they spent changing into and out of their work attire and time they spent walking to and from the changing stations to the time clock.

The district court ruled that time spent changing clothes was lawfully excluded from compensable working time under FLSA regulations, which specifically exclude "time spent changing clothes" from compensable working time provided that this time has been excluded "by a bona fide collective bargaining agreement." The court also, however, concluded that the time spent walking from the changing stations to the time clock should be compensable. In so ruling, the court noted that there was "substantial disagreement in the case law on this issue," and so it certified the issue for an interlocutory appeal.

On appeal, the 8th Circuit reversed the district court on this narrow issue, determining that the time spent walking to and from the time clock was not part of the compensable "workday" under the FLSA. A "workday" is the period between the commencement and completion of an employee's principal activities. A "principal activity" is one "which such employee is paid to perform."

The employees contended that the compensable workday began and ended when they changed clothes because this activity was a mandatory job requirement. The 8th Circuit rejected this argument, reasoning that even though changing clothes was mandatory, the time they spent doing this was not part of the workday because employees were not paid for this time under the collective bargaining agreement.

Notably, the 8th Circuit's reasoning conflicts with the current position of the Department of Labor that an activity excluded from the workday under a collective bargaining agreement can constitute a "principal activity" for purposes of determining the "workday." The 8th Circuit noted that the department's views on this issue had changed with the "vicissitudes of electoral winds" and, as a result, was entitled to considerably less deference than a consistently held agency view.

Adair v. ConAgra Foods Inc., 8th Cir., No. 12-3565 (Aug. 30, 2013).

Professional Pointer: This decision applies only in workplaces where time spent changing clothes is excluded from compensation under the terms of a collective bargaining agreement or a consistent custom and practice arising out of such an agreement. Where no collective bargaining agreement applies, time spent changing mandatory uniforms may be considered part of the compensable workday if it is "integral and indispensable" to the employee's principal activity.

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