MILLER CANFIELD

Donning/Doffing Protective Clothing is "Changing Clothes" under FLSA, SCOTUS Rules

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Putting on and taking off protective clothing is considered "changing clothes" under the Fair Labor Standards Act (FLSA), the U.S. Supreme Court ruled on January 27, 2014. The ruling allows employers and unions to exclude time spent on this activity from that which would otherwise be compensable to the employee.

In Sandifer v. United States Steel Corp., current and former employees filed suit seeking back pay for the time spent "donning and doffing" various pieces of protective gear. U.S. Steel argued that the time was not compensable under the relevant collective bargaining agreement.

The FLSA contains a provision which allows unions and employers to exclude, as part of a collective bargaining agreement, "any time spent in changing clothes … at the beginning or end of each workday." 29 U.S.C. §203(o). The Supreme Court ruled that "clothes" includes "items that are both designed and used to cover the body and are commonly regarded as articles of dress." In reaching its decision, the Court rejected the employees' argument, which would have excluded protective clothing from the statute, as well as the employer's position, which would have included anything worn on the body. The Court explained that its definition left room for distinguishing between clothes and items that are not clothes, such as equipment.

Next, the Court concluded that "changing" includes time spent altering dress. Thus, the statutory provision is not limited to the situation where an employee substitutes protective clothing for street clothes. Instead, the provision also includes time spent putting protective clothing over street clothes.

Applying the clarified standard to the facts of the case, the Court determined that the employees' donning and doffing activities qualified as changing clothes. It noted that of the 12 items at issue, nine "clearly fit" within the definition of clothes. However, the remaining three items – earplugs, glasses and a respirator – did not satisfy the standard. Acknowledging that the FLSA was not intended to turn federal judges into time-study professionals, the Court explained that the lowers courts must decide "whether the time period at issue can, on the whole, be characterized as 'time spent in changing clothes.'" Thus, if an employee spends the majority of the time in question putting on non-clothes item, §203(o) would not apply.

What does this case mean for employers?

For employers with collective bargaining agreements, Sandifer clarifies whether certain activities at the beginning and end of a shift are compensable or not. However, because the Supreme Court's definition of "clothes" does not include every item an employee puts on, employers should consult with counsel when evaluating whether certain tasks, including donning and doffing, are compensable under the FLSA.

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