Employment Alert

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SCOTUS: Security Screening Not Compensable Working Time

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Many employers have found out the hard way that Wage and Hour lawsuits represent the most significant labor and employment risk facing employers. Many of these lawsuits address whether certain pre- and post-shift activities constitute compensable time under the Fair Labor Standards Act. On December 9, 2014, the U.S. Supreme Court (SCOTUS) held in *Integrity Staffing Solutions, Inc. v. Busk* that time spent by employees waiting at security checkpoints after the end of their work days was **not** compensable time.

The plaintiffs in *Integrity Staffing* worked for a staffing company that provided employees to Amazon warehouses across the country. At the end of each shift, the employees were required to go through security checkpoints and metal detectors after they clocked out but before they could leave. The plaintiffs alleged that because their employer required the employees to go through the screening, the time spent waiting for and going through the screening was compensable working time. The District Court dismissed the case but the Ninth Circuit Court of Appeals reversed and held that the time was compensable because it was "integral and indispensable" to the employer's business and performed for the employer's benefit.

SCOTUS reversed the Ninth Circuit and held that the Portal-to-Portal Act does not cover activities "preliminary or postliminary" to the principal activities the employee was hired to perform. In finding that the security screenings were "noncompensable postliminary activities," the Supreme Court noted that the employees were not hired to go through security screenings; they were hired to retrieve packages in Amazon's warehouse. Additionally, the employees could perform their principal activities without going through the security screenings. Therefore, relying upon a 1951 Department of Labor Opinion Letter, the Supreme Court held that security screenings were not compensable working time.

If the Ninth Circuit's test had been accepted by the Supreme Court, the Portal-to-Portal Act would have been extended to require that employers pay for all

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activities required by the employer rather than just those activities that the employees were hired to perform. Practically speaking, employers require employees to do many things that are not compensable under the Portal-to-Portal Act. For example, employers require employees to travel to/from work every day. The Portal-to-Portal Act excludes commuting time from compensable working time. Arguably, the Ninth Circuit's test would have opened the door for commuting and other excluded activities to be compensable – a considerable hardship for employers located in the Ninth Circuit, which includes California where the average commute time is nearly 30 minutes. Nationwide the average commute time is 23.7 minutes. This would equate on average to an additional 45 minutes of paid working time each day for all employees.

The Supreme Court's unanimous decision in favor of employers is a welcome sign in the face of increased Wage and Hour initiatives being advanced by President Obama who recently signed an Executive Order increasing the minimum wage for federal contractors to $10.10. Employers should continue to be vigilant in watching for potential Wage and Hour risks in their organizations.

Should you have any questions regarding this decision, please contact Sarah E. Pawlicki or James B. Yates.