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LEGAL ALERT

Supreme Court Clarifies Meaning Of "Changing Clothes" Under The Fair Labor Standards Act

On January 27, 2014, the U.S. Supreme Court held that the time spent by employees donning and doffing (putting on and taking off) certain protective gear is not compensable under Section 203(o) of the Fair Labor Standards Act (FLSA). This ruling will significantly impact the ability of employees to seek compensation for the donning and doffing of certain items in the unionized setting. Additionally, the Court made comments about the *de minimis* doctrine which could well impact employers in the nonunionized environment. *Sandifer v. United States Steel Corp.*

Background

In recent years, numerous courts have considered the issue of whether donning and doffing of certain items may be compensable.

In the nonunion setting, this has traditionally called for an analysis of, among other things, the type of items at issue and the length of time it takes to don and doff those items. But the analysis is somewhat different in a unionized facility. There, employees can bargain away their right to have any of the time considered to be "work" pursuant to Section 203(o) of the FLSA, which provides:

> In determining for the purposes of [S]ections 206 and 207 of this title the hours for which an employee is employed, there shall be excluded any time spent in *changing clothes* or washing at the beginning or end of each workday which was excluded from measured working time during the week involved by the express terms of or by custom or practice under a bona fide collective-bargaining agreement applicable to the particular employee.

The issue for the Court was the proper interpretation of the phrase "changing clothes" as set forth in Section 203(o).

Facts And History Of The Case

Unionized employees at U.S. Steel were required to don and doff certain items of personal protective equipment prior to walking to their work location. The personal protective equipment at issue consisted of, among other items, flame-retardant pants and a jacket, work gloves, metatarsal boots, a hard hat, safety glasses, ear plugs, a respirator, and a

"snood" (a hood that covers the top of the head, the chin, and the neck). The employees were not compensated for this time and argued that such time should be compensable in a collective action under the FLSA that was filed on behalf of 800 former and current hourly workers in a federal district court.

The district court found that the FLSA did not require clothes-changing time to be compensable on these facts, but certified the issue of the compensability of the walking time for an interlocutory appeal to the U.S. Court of Appeals for the 7th Circuit. The district court also found that the Collective Bargaining Agreement (CBA) provided that the activities were non-compensable, which was not before the Supreme Court on appeal.

The 7th Circuit, in an opinion written by Judge Posner, found that the personal protective equipment constituted "clothes". Posner stated, "[i]t would be absurd to exclude all work clothes that have a protective function from [S]ection 203(o), and thus limit the exclusion largely to actors' costumes and waiters' and doormen's uniforms."

Judge Posner did place some limitation on what items could be considered clothes. He noted that not everything a person wears, such as glasses, ear plugs, or a watch, could be considered clothing. The opinion then considered other issues, such as whether subsequent walking time was compensable, but the Supreme Court only granted *certiorari* on the first issue.

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The Supreme Court Ruling

The Supreme Court unanimously agreed with Judge Posner. The Court began by reviewing the definition of the term "clothes," as it was defined by dictionaries at the time of the enactment of Section 203(o) in 1949. The Court determined that "clothes" meant items that are both designed and used to cover the body and are commonly regarded as articles of dress. It found no reason to depart from that definition.

The Court rejected the employees' argument that the term "clothes" is not sufficiently broad to include items designed and used to protect against workplace hazards. It further found that the employees' position would overly limit the application of Section 203(o) and was incompatible with the FLSA's historical context. While the Court acknowledged the difficulty in crafting a general definition for the term "clothes," it noted that its construction "leaves room for distinguishing between clothes and wearable items that are not clothes, such as some equipment and devices."

Having addressed the proper definition of the term "clothes," the Court then considered the meaning of "changing." The Court found that "while it is true that the normal meaning of 'changing clothes' connotes substitution, the phrase is certainly able to have a different import." The Court concluded the broader statutory context encompasses both actual changing and also layering garments atop one another after arriving on the job site. Applying these principles, the Court found that nine of the twelve items at issue fit within the interpretation of "clothes," while glasses, earplugs, and a respirator did not.

But the most meaningful and lasting aspect of the opinion may have come in the form of dictum regarding the *de minimis* doctrine. For over 60 years, courts have typically embraced the concept of the *de minimis* doctrine [which is Latin referring to a small or trivial amount] to conclude that certain instances of minimal donning and doffing at the beginning and end of each shift need not be compensated. The Court found that "[a] *de minimis* doctrine does not fit comfortably within the statute at issue here, which, it can fairly be said, is all about trifles . . ." (emphasis in original). The Court continued, "there is no more reason to disregard the minute or so necessary to put on glasses, earplugs, and respirators, than there is to regard the minute or so necessary to put on a snood."

What Does This Mean For Employers?

As a result of this ruling, unionized employees should not be able to recover under Section 203(o) for most time spent donning and doffing standard protective gear when an applicable CBA expressly excludes this activity from measured working time, or where the time is excluded under that CBA by custom or practice. In a broader context, this case apparently undercuts the viability of the *de minimis* doctrine, at least in the donning/doffing context. The Court seemed to confine its discussion of the *de minimis* doctrine to the context of a case under Section 203(o), but lower courts may well apply the Court's reasoning to nonunionized workforces.

For additional information on how this ruling may affect your business, please contact your regular Fisher & Phillips attorney.