

# Time Spent in Security Screening Compensable under Laws of Nevada and Arizona, Federal Court Rules

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The laws of Nevada and Arizona require employers to pay their workers for time spent going through security screenings at the end of their shifts, the federal appeals court in Cincinnati has ruled. *Busk et al. v. Integrity Staffing Solutions et al.*, Nos. 17-5784 and 17-5785 (6th Cir. Sept. 19, 2018).

While the U.S. Supreme Court held in 2014 that the federal Fair Labor Standards Act (FLSA), as amended by the Portal-to-Portal Act, did not require employers to pay employees for such time, the appeals court explained the laws of Nevada and Arizona are broader than the FLSA and the time is compensable. (See our article on the Supreme Court decision, [Supreme Court: Security Screening Time Not Compensable under FLSA.](#))

The Nevada claims, the Sixth Circuit ruled, may proceed. The Court, however, dismissed the Arizona claims because the plaintiffs were not specific enough as to the workweeks in which they allegedly lost wages.

## Background

Integrity Staffing Solutions provides warehouse labor services to businesses in the United States where hourly workers fill orders, track merchandise, and process returns. Integrity employs thousands of hourly warehouse employees at each of Amazon.com's facilities. Some plaintiffs in this case were Integrity's hourly employees at warehouses in Nevada and Arizona. Others were employed directly by Amazon.

In 2010, warehouse workers filed a putative class action in the U.S. District Court of Nevada on behalf of similarly situated employees in the Nevada warehouses for alleged violations of the FLSA and Nevada labor laws. They alleged that workers were not compensated for the time required to undergo employer-mandated security clearance before being allowed to leave the employer's property.

Following the 2014 U.S. Supreme Court ruling that the time employees spent going through security screenings is not compensable under the FLSA, the plaintiffs' complaint was amended to eliminate the federal law claims and to assert claims under the laws of Nevada and Arizona for unpaid wages and overtime, as well as minimum wage violations.

The Nevada plaintiffs also alleged that the security screenings they were required to undergo before taking their lunch breaks resulted in them being "unable to take a full 30-minute uninterrupted lunch period" as required by state law.

The district court granted the defendants' motion to dismiss the claims. The plaintiffs appealed.

## Portal-to-Portal Act

The Portal-to-Portal Act amended the FLSA to exclude certain preliminary and postliminary activities from compensable work. These activities are not compensable time if they did not constitute a "principal activity" or were "integral and indispensable" to the workers' other principal activities. The Supreme Court explained that an activity is "integral and indispensable" to the principal activities an employee is employed to perform only if it is an "intrinsic element of those activities and one with which the employee cannot dispense if he is to perform his principal activities." The Supreme Court found this test was not met when undergoing a security screening was not an intrinsic element of the workers' principal activities of pulling products from warehouse shelves and packing them for shipment, and the security screenings were not "indispensable" to their work because the employer



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could have eliminated the security screenings without impairing the employees' ability to complete their work.

## Nevada

The U.S. Court of Appeals for the Sixth Circuit revived the plaintiffs' Nevada claims.

The Court noted the district court's main basis for dismissing the plaintiffs' Nevada claims was that it found "no private right of action exists for violations of [state wage-and-hour laws] Nevada Revised Statutes §§ 608.005-.195 in the absence of a contractual claim." After the lower court released its ruling, the Nevada Supreme Court held in *Neville v. Eighth Jud. Dist. Ct.*, 406 P.3d 499 (Nev. 2017), that "NRS 608.140 explicitly recognizes a private cause of action for unpaid wages." Therefore, the Sixth Circuit reversed the district court's decision to the contrary.

Next, after acknowledging the Nevada courts in wage-and-hour issues have looked to the FLSA in interpreting Nevada law, the Court pointed out that although the Portal-to-Portal Act exempts time spent undergoing mandatory security screening from compensable "work," Nevada has not adopted that exemption.

In addition, the Court said, the district court mistakenly concluded that Nevada requires plaintiffs to identify the "particular workweek in which, taking the average rate, they received less than the minimum wage per hour." The Court found this FLSA "workweek" requirement has not been adopted by Nevada.

Finally, the district court had dismissed all of the Nevada wage claims on the grounds that they were noncompensable under the Portal-to-Portal Act. In a footnote, the Court ruled that the district court erred in dismissing the Nevada plaintiffs' claims relating to their shortened meal-periods. The Portal-to-Portal Act does not apply to claims that employees were uncompensated for time spent during the workday.

Accordingly, the Court ruled the Nevada claims may proceed.

## Arizona

While the Court found Arizona law does not exempt time spent undergoing mandatory security screening from compensable "work," it concluded that Arizona applies a "workweek requirement" analogous to that provided by the FLSA.

Accordingly, "because the Arizona plaintiffs have failed to allege a workweek in which they failed to receive the minimum wage, they have failed to plead a violation of Arizona minimum wage law." The Court affirmed dismissal of the Arizona claims.

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Employers must carefully scrutinize the interplay between applicable federal and state laws to ensure they are in compliance. Regularly reviewing and updating policies and practices with employment counsel can help minimize the risk of litigation or government investigation.

Please contact a Jackson Lewis attorney with any questions.

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