Supreme Court Rules Don, Doff Time Not Compensable under Workers' Collective Bargaining Agreement

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The U.S. Supreme Court has held unanimously that employees need not be paid under the Fair Labor Standards Act for their pre-shift and post-shift donning and doffing of clothing required for work where the employer and the workers' union have agreed in a collective bargaining agreement that such activity would not be compensated. *Sandifer v. U.S. Steel Corp.*, No. 12-417 (Jan. 27, 2014). This had been the view followed by most circuit courts that had addressed the issue. But the Ninth Circuit had found to the contrary.

The plaintiff-employees claimed they were unlawfully denied compensation for time spent putting on and taking off protective gear needed to do their jobs and required by their employer. Section 3(o) of the Fair Labor Standards Act, codified at 29 U.S.C. § 203(o), allows a collective bargaining agreement to exclude from pay "clothes"-changing time. Such a provision was in the plaintiff-employees' collective bargaining agreement.

The Supreme Court ruled "clothes," for the purposes of the FLSA, means "items that are both designed and used to cover the body and are commonly regarded as articles of dress." It rejected the plaintiffs' argument that items designed to protect against workplace hazards could not be "clothes." However, it also rejected the employer's argument that "clothes" is "anything worn on the body."

The Court ruled "changing clothes" means substituting or altering one's dress. Most of the protective clothing and gear worn by the workers, such as flame-retardant jackets, pants, hoods, hardhats, snoods, wristlets, work gloves, leggings, and metatarsal boots, fell within the meaning of "clothes" in Section 3(o), the Court determined. Thus, the time spent donning and doffing this clothing and gear did not require compensation.

Some of the required gear worn by these employees was not "clothes." This included glasses and earplugs. Nevertheless, he Court ruled the time workers spent donning and doffing these items was not compensable because the statutory exclusion for "time spent" changing clothes was broad enough to include items that were not "clothes," so long as the vast majority of the time in question is spent donning or doffing clothes as opposed to non-clothes items. Respirators also were not considered "clothes." The District Court stated that they "are kept and put on as needed at job locations," which would render the time spent donning and doffing them part of an employee's normal workday and thus beyond the scope of Section 3(o). The Seventh Circuit did not address respirators at all, and the Supreme Court said it was "not inclined to disturb the District Court's factual conclusion."

The Court did not address whether employees whose donning and doffing time is excluded by Section 3(o) nevertheless may be entitled to compensation for time spent walking to and from their job sites at the beginning and end of the workday. A lower court granted summary judgment to the employer on this question, but the issue was not before the Supreme Court.

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