Fair Labor Standards Act — Donning and Doffing

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Fair Labor Standards Act – Donning and Doffing

INTRODUCTION

In 2005, in the consolidated cases IBP, Inc. v. Alvarez and Tum v. Barber Foods, Inc., the Supreme Court held that the donning and doffing of unique personal protective gear is “integral and indispensable” to the employee’s work, and thus time spent donning and doffing is compensable under the Fair Labor Standards Act (FLSA) and the Portal-to-Portal Act (PPA). Likewise, the Supreme Court held that the time spent walking to and from the production floor after donning and before doffing, as well as the time spent waiting to doff, are equally compensable. However, the Supreme Court also held that the time waiting to don – time that elapses before the principal activity of donning integral and indispensable gear, was not compensable under the facts of the Tum case.

However, the decision in Alvarez left a number of questions unanswered. For example, the Ninth Circuit’s decision in Alvarez had held that certain activities would not be compensable under the FLSA where the time it took to perform the tasks were “de minimis as a matter of law,” including the donning and doffing of equipment such as hardhats and safety goggles. The Tum district court jury had also found some activities to be de minimis. However, in accepting certiorari for the consolidated Alvarez and Tum case, the Supreme Court denied certiorari on the de minimis issue, and did not comment on the issue in the opinion. Therefore, the Court has remained silent on what test should be used to determine when workplace activities will be determined to be de minimis for the purposes of compensation under the FLSA. Accordingly, circuit courts ever since have since struggled to find the answer to this question.

Also, the extent of the Court’s holding in Alvarez was not made entirely clear. While the Court held that ‘any activity that is ‘integral and indispensable’ to a ‘principal activity’ is itself a ‘principal activity’ under the PPA, it does not appear that the word “any” in this context was intended to be interpreted as broadly as one might think. Thus, the breadth of the Court’s definition of “principal activities”, and the types of preliminary and postliminary activities which the Court considers vital enough to the “principal activity” to constitute “integral and indispensable” activities is not entirely clear.

In the interests of reviewing the way in which courts and commentators have dealt with these and other questions in the wake of the Supreme Court’s decision, the materials that follow provide a summary of post-Alvarez case law and articles on the issue of “donning and doffing” under the FLSA and PPA.
CASE LAW

Supreme Court

   a. Summary:
      - The donning and doffing of unique personal protective gear is “integral and indispensable” to the employee’s work, and thus time spent donning and doffing is compensable under the Fair Labor Standards Act.
      - The time spent walking to and from the production floor after donning and before doffing, as well as the time spent waiting to doff, are equally compensable.
      - The time waiting to don – time that elapses before the principal activity of donning integral and indispensable gear, was held not compensable under the facts of the Tum case.
   b. Citations to Appellate Briefs:
      i. **U.S. Appellate Petitions, Motions and Filings**
         - Appellate Petition, Motion and Filing, Petitioners' Reply Brief, 2005 WL 166975 (U.S., Jan. 21, 2005)
         - Appellate Petition, Motion and Filing, Brief in Opposition, 2005 WL 39879 (U.S., Jan. 03, 2005)
         - Appellate Petition, Motion and Filing, Supplemental Brief of Petitioner, 2004 WL 2491902 (U.S., Nov. 02, 2004)
         - Appellate Petition, Motion and Filing, Brief in Opposition to Petition for