

Integrity Staffing Solutions, Inc. v. Busk, No. 13-433, (previously described in the March 3, 2014, Docket Report)

The Fair Labor Standards Act requires employers to compensate employees for the work that they were hired to perform, but it exempts “preliminary” and “postliminary” activities that are not “integral and indispensable” to the employees’ “principal activity or activities.”²⁹ U.S.C. § 254(a). Today, the Supreme Court unanimously held that the time that employees spend waiting for and undergoing antitheft security screenings at the end of their workday are postliminary activities that are not compensable under the FLSA.

Integrity Staffing operates regional distribution centers for Amazon.com. To prevent theft, employees are required to pass through a security checkpoint when they leave the warehouse floor. Because so many employees leave at the end of each shift, the wait to clear security may take up to 25 minutes. Former warehouse employees filed suit complaining that Integrity Staffing unlawfully failed to pay workers for the time spent waiting in line and being screened. The Ninth Circuit held that the time was compensable because the screenings were necessary to the employees’ jobs and were done for Integrity Staffing’s benefit.

In a unanimous opinion by Justice Thomas, the Supreme Court reversed that ruling. The Court held that an activity is “integral and indispensable to the principal activities that an employee is employed to perform,” and therefore is compensable under the FLSA, “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.” Because Integrity Staffing hired its warehouse employees to pack items for shipment to Amazon’s customers, that was the employees’ principal activity; they were not hired to undergo security screenings. And because Integrity Staffing “could have eliminated the screenings altogether without impairing the employees’ ability to complete their work,” the screenings were neither integral nor indispensable to “the productive work that the employee is *employed to perform*.”

In addition to joining the opinion of the Court, Justice Sotomayor, joined by Justice Kagan, filed a concurring opinion. The concurrence explains that an activity is indispensable to a principal work activity “only when an employee could not dispense with it without impairing his ability to perform the principal activity safely and effectively.” The concurrence also explains that the FLSA’s exception for preliminary and postliminary activities and the Department of Labor’s regulations implementing that exception “distinguish[] between activities that are essentially part of the ingress and egress process, on the one hand, and activities that constitute the actual ‘work of consequence performed for an employer,’ on the other hand.” (quoting 29 C.F.R. § 790.8(a)).

The decision in *Integrity Staffing* is obviously important for employers who conduct security screenings of their employees on the way into or out of work, and may dispose of a series of nationwide class actions filed after the Ninth Circuit’s decision that seek backpay for time spent undergoing such screenings. The decision will also have broader implications for all employers—and especially those that have check-in or check-out procedures for their hourly employees—because it clarifies that the FLSA requires compensation only for activities that are indispensable to the productive work that an employee was hired to perform. For many businesses, the question going forward is likely to be whether collective-bargaining agreements provide for pay where federal law does not require it.

Any questions about the case should be directed to Charles A. Rothfeld (+1 202 263 3233) or Richard B. Katskee(+1 202 263 3222) in our Washington office.