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The Latest from the U.S. Supreme Court - Time Spent Putting On and Taking Off Protective Gear Is Not Compensable Under the Fair Labor Standards Act

Earlier this week, in Sandifer v. U.S. Steel Corp., the Supreme Court addressed whether unionized workers may be entitled to compensation for time spent putting on and taking off protective gear. The Court found that putting on and taking off protective gear qualifies as "changing clothes" under the Fair Labor Standards Act (FLSA) and, as such, is not compensable time if it is treated as non-work time by a collective bargaining agreement.

The FLSA provides that time spent changing clothes or washing at the beginning or end of each workday is excluded from compensable time if it is treated as non-work time by a collective bargaining agreement.

In Sandifer v. U.S. Steel Corp., the workers suing U.S. Steel argued that they should be compensated for time spent changing into protective gear because protective gear is not "clothing" and they were not technically "changing" into the protective gear, but were instead putting it on over their clothes. The Supreme Court did not adopt these positions.

Instead, the Court examined the meaning of "clothes," finding that the common meaning denotes items that are designed to cover the body and are commonly regarded as articles of dress. The Court then reasoned that because protective gear covers the body it should be included in the meaning of "clothes." However, the Court was quick to point out that "clothes" does not include everything worn on the body -- distinguishing, for instance, between "clothes" and equipment or devices that may be wearable.

The Court also examined the meaning of "changing," finding that the common meaning at the time the FLSA was enacted was to substitute or alter. The Court therefore reasoned that adding protective gear on top of clothing is the same as altering or "changing" it.

The Court then looked at the 12 items at issue in this case, finding that 9 of them (jackets, pants, hoods, hardhats, snoods, wristlets, work gloves, leggings and metatarsal boots) constituted "clothing." As for the other three (safety glasses, earplugs and a respirator), the Court found that, although they were not "clothing," the time devoted to putting on glasses and earplugs and taking them off was minimal and the time spent putting on a respirator would already have been compensated, as this item was kept on the job site and used on an as-needed basis.

It should be noted that the Sandifer decision applies only to unionized employers with the requisite contract language or practice described per the FLSA above and does not apply to non-union employers. Further, while the Court's decision in Sandifer provides some clarity to this FLSA provision, even unionized employers should take note that courts will continue to consider this issue on a case-by-case (or item-by-item) basis.

Should you have any questions about this or any other employment related issue, please feel free to contact Jay Elliott, Jennifer Terry or any other member of our Labor and Employment Law Practice Group.

The opinions expressed in this bulletin are intended for general guidance only. They are not intended as recommendations for specific situations. As always, readers should consult a qualified attorney for specific legal guidance. Should you need assistance from a Miller & Martin attorney, please call 1-800-275-7303.

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