3rd Circuit: Time Spent Donning and Doffing Protective Gear Was Compensable

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Activities not involving significant exertion, such as donning and doffing protective gear, still can be compensable work under the federal Fair Labor Standards Act, according to the 3rd U.S. Circuit Court of Appeals. In this case, 540 current and former chicken-processing workers sued Tyson seeking wages for time spent donning, doffing and washing various kinds of protective gear. Tyson required these activities to be performed at the workplace, apparently because this was the only practical way to comply with government food-processing regulations.

Generally, the FLSA obligates employers to count all "hours worked" in figuring the required wages for nonexempt employees. Whether activities involving donning, doffing or cleaning protective gear are compensable time depends on several factors, including whether they are either "work" in and of themselves or take place inside the workday (the period between the employee's first and last "principal activity" performed each day).

Employers should anticipate a great deal of litigation in this area in coming years. The *Tyson* case demonstrates that lower courts might draw debatable conclusions from the Supreme Court's November 2005 consolidated opinion in *IBP v. Alvarez* and *Tum v. Barber Foods, Inc.* and might be led to very literal applications of principles they believe they have divined from it. Whether other courts take a similarly expansive view of what constitutes compensable work remains to be seen.

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