

## LABOR AND EMPLOYMENT UPDATE

*U.S. Supreme Court rules that time spent by employees waiting to undergo security screenings at the workplace is not compensable under the FLSA*

On December 9, 2014, the U.S. Supreme Court issued a unanimous opinion in *Integrity Staffing Solutions, Inc. v. Busk*, 574 U.S. \_\_\_\_ (2014), holding that the time that employees working at Amazon.com warehouses in Nevada spent waiting to undergo, and then undergoing, security screenings is not compensable under the Fair Labor Standards Act of 1938 (“FLSA”). The Court’s opinion reversed a judgment of the U.S. Circuit Court of Appeals for the Ninth Circuit that asserted that the postshift security screenings in those warehouses were compensable because they were necessary to the principal work performed by the employees and because the screenings were done for the benefit of the employer. The Ninth Circuit had in turn reversed the judgment of the U.S. District Court for the District of Nevada, which dismissed the putative class action filed by employees of Integrity Staffing Solutions, the company that provided staffing services to the Amazon.com warehouses. The District Court held that the security screening were not compensable under the FLSA.

In siding with the ruling of the District Court, the Supreme Court held that the security screening performed in the warehouses at the end of each workday was a postliminary activity under the Portal-to-Portal Act of 1947, and was therefore exempted from compensation under said statute. The Portal-to-Portal Act was approved by Congress in response to what was deemed an “emergency” situation that resulted from the filing of more than 1,500 lawsuits under the FLSA requesting nearly six billion dollars in backpay and damages. Those lawsuits were filed after two Supreme Court decisions in 1944 and 1948, respectively, deemed as compensable all time during which an employee was necessarily required to be in the employer’s premises and, in particular, the time spent traveling between mine portals and underground work areas. Under the Portal-to-Portal Act, employers became exempted from liability for claims for payment of activities that are preliminary and postliminary to the employee’s principal activities at the workplace.

When confronted with the claim that postshifts security screenings at a warehouse should be compensable under the FLSA, the Supreme Court found that Integrity Staffing “did not employ its workers to undergo security screenings, but to retrieve products from warehouse shelves and package those products for shipment to Amazon customers.” The Court reasoned that those screenings were not an indispensable and integral part of the employees’ duties, but postliminary activities that the Portal-to-Portal Act had deemed non-compensable. Said reasoning was supported not only by the relevant provisions of said Act, but also by an Opinion Letter that the Department of Labor issued in 1951. In said Opinion Letter, the Department found that preshift security searches for dangerous material in a rocket-powder plant, and postshift security searches in that plant to avoid theft,



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were non-compensable. The Court's unanimous opinion suggests a broad reading of the exemption provisions of the Portal-to-Portal Act regarding activities that are not an integral and indispensable part of the principal activities that an employee has been hired to perform.

You can find the text of the Opinion [here](#).

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