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Pennsylvania Employers Must Pay for Time Spent in Security Screenings

Law and the Workplace Blog on **August 3, 2021**

On July 21, 2021, answering a question certified by the United States Court of Appeals for the Sixth Circuit, the Pennsylvania Supreme Court held that time spent by employees waiting to undergo and undergoing mandatory security screening on an employer's premises is compensable "hours worked" under Pennsylvania law. The decision from the Commonwealth's high court, in *In re Amazon.com, Inc.*, No. 43 EAP 2019, is in stark contrast to the U.S. Supreme Court's 2014 holding in *Integrity Staffing Solutions, Inc. v. Busk*, 574 U.S. 27 (2014), which held that time spent in security screenings is not compensable under the federal Fair Labor Standards Act ("FLSA").

Busk and Federal Law

Under amendments to the FLSA in the Portal-to-Portal Act of 1947 (and codified in 29 U.S.C. § 254(a)(2)), an employer is not required to pay for time spent in:

activities which are preliminary to or postliminary to [the] principal activity or activities [the employee is employed to perform], which occur either prior to the time on any particular workday at which such employee commences, or subsequent to the time on any particular workday at which he ceases, such principal activity or activities.

In *Busk*, the plaintiffs worked in one of Amazon's shipping warehouses retrieving products from shelves and packaging those products for shipment to Amazon customers. The employees were required at the end of each workday to spend significant time undergoing "security screening" before they could leave the premises, and sought compensation for the time spent in those screening activities. The U.S. Supreme Court rejected the claim, holding that time is compensable under the FLSA only if the activity at issue "is integral and indispensable to the principal activities that an employee is employed to perform"—that is, "one with which the employee cannot dispense if he is to perform his principal activities." The Court concluded that the security screenings—while required by the employer—were not "integral and indispensable" to the employees' principal activities of retrieving and packaging products.

In re: Amazon.com, Inc.

States are, however, at liberty to establish higher standards and protections than the FLSA. In the class action lawsuit underlying *In re: Amazon.com, Inc.*, the plaintiffs similarly challenged the defendants' policy of requiring warehouse employees to undergo security screenings and personal belonging searches after clocking out at the end of their shifts. The district court dismissed the plaintiffs' claims under both the FLSA, applying *Busk*, and under the Pennsylvania Minimum Wage Act ("PMWA"), on the ground that the PMWA did not contain language excluding the application of the federal principles underlying *Busk.*

Following an appeal by the employees, the Sixth Circuit certified the following questions to the Pennsylvania Supreme Court: "(1) Is time spent on an employer's premises waiting to undergo and undergoing mandatory security screening compensable as 'hours worked' within the meaning of the [PMWA]?" and "(2) Does the doctrine of *de minimis non curat lex* as described in [U.S. Supreme Court jurisprudence] . . . apply to bar claims brought under the [PWMA]?"

The Pennsylvania Supreme Court noted that the PMWA provides greater wage protection to workers than the FLSA, reflecting Pennsylvania's "strong public policy" to provide employees with compensation for *all* hours worked. As such, the court noted that it is not bound by *Busk*, and that Pennsylvania has never adopted the FLSA's language classifying "activities which are preliminary to or postliminary to" a worker's principal activities as non-compensable.

The court also noted the Pennsylvania Department of Labor's definition of "hours worked" as including "time during which an employee is required by the employer to be on the premises of the employer." Because Amazon's employees were required to remain on its premises, the court found that the mandatory screenings and personal belonging searches constituted compensable "hours worked" within the meaning of the PMWA.

Finally, the court held that the *de minimis* exception does not apply to the PMWA, observing that the law "clearly and unambiguously requires payment for 'all hours worked,' . . . signifying the legislature's intent that *any* portion of the hours worked by an employee does not constitute a mere trifle."

Takeaways

In re Amazon.com, Inc. is a prime example of why employers must remain mindful of both federal and state law when implementing wage and hour policies. As a result of decisions like this (and *Frlekin v. Apple Inc.*, in which the California Supreme Court held that under California law non-exempt employees must be paid for time spent undergoing mandatory bag or other security checks), employers with multi-state operations must decide whether to implement uniform policies nationwide or whether to tailor those policies to particular locations based on state law. Pennsylvania employers should immediately conform their pay policies to the decision.

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