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Federal District Court Says Pre-Shift COVID Screening Time Not Compensable

Law and the Workplace on **July 12, 2022**

In the first reported decision we've seen addressing the issue head on, a federal district court in California dismissed a putative collective action claim under the Fair Labor Standards Act (FLSA) seeking payment for time spent in pre-shift COVID screening.

Prior to clocking in each day, the plaintiff—a non-exempt truck driver whose job duties included loading and transporting automobile parts from a central distribution center to stores throughout southern California—was required to submit to COVID-related health screening conducted on his employer's premises. During the screening process, a company employee asked the plaintiff a series of questions and took the plaintiff's temperature. The total time spent in the screening process often exceeded five minutes, which included waiting time.

The plaintiff filed a collective action claim, contending that the time spent by him and other employees participating in the daily screening was compensable under the FLSA.

Starting with the premise that time spent in pre-shift activities is only compensable under the FLSA if it is "integral and indispensable" to the employee's "principal activities or activities which [the] employee is employed to perform," the district court granted the employer's motion to dismiss the FLSA claims, noting:

> A pre-shift COVID screening is not the "principal activity or activities which [the] employee is employed to perform." 29 U.S.C. § 254(a)(1). O'Reilly did not hire the employees to undergo health screenings, but instead to load and transport products to stores.... [T]he pre-shift COVID screenings were not "integral and indispensable" to the employees' duties because the screening was not an intrinsic element of the loading and transporting of products to the stores. The screenings were not indispensable to the employees' duties because O'Reilly could eliminate them completely without hindering the employees' ability to perform their duties.... A pre-shift COVID temperature check and short questions regarding exposure do not share the required nexus with Plaintiff's duties of retrieving automotive parts and delivering them to auto part stores to make the screening a compensable activity that is integral and indispensable to those activities.

Notably, the court referenced—and then distinguished—the U.S. Department of Labor's *COVID-19 and the Fair Labor Standards Act Questions and Answers*, which were issued during the height of the pandemic and which many employers felt were ambiguous on the issue of which COVID-related activities were and weren't considered "hours worked" under the FLSA:

> Unlike the nurse in the DOL example whose principal job duty is to keep patients healthy and has direct patient contact, Plaintiff's principal activities consisted of manual labor and transportation of auto parts to stores.

We examined those agency Q&As—and the broader issues around compensability of time spent in vaccination, testing, and screening activities—in an earlier blog.

The decision is *Pipich v. O'Reilly Auto Enterprises, LLC* (S.D. Cal. Mar. 15, 2022).

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