

\$22 Million FLSA Verdict Illustrates the Significance of Brief Unpaid Work Tasks

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On May 9, the U.S. Department of Labor (“DOL”) secured its largest Fair Labor Standards Act (“FLSA”) jury verdict in history, when a jury in the Eastern District of Pennsylvania awarded \$22 million to a class of approximately 7,500 workers for unpaid time spent on pre- and post-shift activities. The case is *Su v. East Penn Manufacturing Co.*, E.D. Pa. Civil Action No. 5:18-cv-01194-GEKP.

Under the Portal-to-Portal Act amendments to the FLSA, codified at 29 U.S.C. § 254(a)(2), employers are not required to pay for time spent on preliminary or postliminary activities that occur before or after the principal activity an employee is employed to perform, except for tasks that are “integral and indispensable” to the principal activities.

Ambiguity over what tasks are “integral and indispensable” has contributed to litigation in recent years regarding activities such as [bag checks, other security screenings](#), and COVID-19 health screenings, among other allegedly compensable tasks.

The DOL sued East Penn Manufacturing (“East Penn”), a lead battery manufacturer, in 2018, alleging that the company failed to pay wages for time spent by non-exempt employees changing into uniforms, donning and doffing personal protective equipment (“PPE”), and showering after shifts. The DOL alleged these activities were integral and indispensable to the work of manufacturing batteries, which involves exposure to toxic materials including lead, cadmium, arsenic, sulfuric acid, and ammonia. East Penn argued that these were generic safety measures taken by employees in numerous industries and settings, and were not inherent to the employees’ work.

On summary judgment, the district court agreed with the DOL, ruling that the activities at issue were compensable as a matter of law. There was also no dispute that the activities were unpaid. At trial, the jury was tasked with evaluating East Penn’s defenses (including that the work was *de minimis*), and if it found liability, deciding whether the violations were willful and awarding damages. After a 30-day trial, the jury rendered its record-setting verdict.

The *East Penn* case is a sobering reminder that even brief preliminary and postliminary activities may present thorny legal issues that can add up to serious liability. The risk may be even greater in states such as California, New York, Massachusetts, and others where steep penalties are potentially available or, in the case of California, where the definition of compensable time expands beyond the Portal-to-Portal Act's limits. Employers are well-advised to pay careful attention to such issues and consider partnering with sophisticated employment counsel to minimize risk.

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