



## Clean-Uniform Policy May Lead to Additional Pay

Insights

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Most healthcare employers require employees to wear some sort of uniform. Of course, the most familiar uniforms in this setting are “scrubs,” but some employers require lab coats or other garments.

Some healthcare employers also require that uniforms be cleaned daily and be wrinkle-free. Does the clean and wrinkle-free requirement mean that employees must be paid for the time they spend washing and ironing their uniforms? That issue lies at the center of a recent lawsuit filed under the federal Fair Labor Standards Act (FLSA) against a nursing home facility in Pennsylvania. *Guerra v. Heartland Employment Services LLC*.

### Professional Appearance and Dress-Code Policy

According to the complaint, the nursing home adopted a “Professional Appearance and Dress Code” policy that requires employees to show up for work each day in a clean, wrinkle-free uniform. Employees allegedly were forced to purchase the uniforms from a single approved vendor, were not provided with “onsite” laundry service or facilities, and faced discipline if they failed to comply with the policy.

A nurse’s assistant sued the nursing home, alleging that in order to comply with the policy, she spent an average of three hours per week at home washing, drying, and ironing her uniform. She alleges that the nursing home violated the FLSA because it failed to compensate her for this “off-the-clock” time.

Although this case is in its infancy and there have been no significant rulings yet, the allegations highlight the murky question of whether time spent maintaining mandatory uniforms is compensable under the FLSA. One uniform issue where we have some guidance relates to how the cost of maintaining such uniforms is treated under the FLSA.

### DOL Enforcement Policy on Uniform Cleaning Costs

According to its internal guidance manual, the *Field Operations Handbook*, the U.S. Labor Department’s (DOL’s) enforcement position provides that where an employer requires an employee to wear a clean uniform *and* the uniform requires “ironing, dry cleaning, daily washing, commercial laundering, or other special treatment,” the employer must reimburse the employee for the cost of such cleaning if the cost reduces the employee’s wages below the federal minimum wage. However,

the cost will be deemed satisfied if the employer pays the employee an amount equivalent to one hour at the federal minimum wage (presently \$7.25) per week (or one-fifth of that amount per day).

Conversely, the DOL's enforcement policy states that where the uniform is made of "wash and wear" materials, may be washed and dried with other personal garments, does not require ironing or other special treatment, and where the employee is furnished more than a single uniform, employers are not required to reimburse employees for the maintenance costs.

The *Field Operations Handbook* makes a single reference to the *time* spent cleaning a required uniform. It states that the time spent cleaning uniforms will not be counted as FLSA worktime if the employer pays the employee an amount equivalent to one hour at the federal minimum wage per week (or one-fifth of that amount per day). Though not explicitly stated, the enforcement policy seems to imply that if the employer does *not* pay an amount equivalent to at least one hour at the federal minimum wage per week for maintaining a uniform of this kind, the DOL will deem the time spent cleaning uniforms to be FLSA worktime for which employees must be paid.

### **Private Wage Lawsuits Still a Risk**

The DOL's enforcement manual is meant to offer its investigators and staff with interpretations of statutory provisions and guidance when conducting wage and hour investigations. It does not prevent an individual employee (or a group of employees) from filing an FLSA lawsuit seeking payment of wages or overtime due to time spent cleaning uniforms. A private lawsuit may claim that the DOL's enforcement position is wrong and should not be followed by the court. Or an employee's wage claim may be based on state or local wage-hour laws rather than the federal FLSA.

So what have courts said? Unfortunately, not much, as few courts have actually ruled on the issue. One of the few courts to weigh in concluded that cleaning a uniform was not integral and indispensable to a security guard's primary activity (*i.e.*, providing security). Therefore, the court concluded that the time spent cleaning was not compensable worktime.

A recent opinion from the U.S. Supreme Court possibly offers further support for treating the time as non-compensable. In *Integrity Staffing Solutions, Inc. v. Busk*, the Supreme Court rejected an employee's argument that simply because an employer requires a particular activity, the time spent performing that activity automatically becomes integral and indispensable, and therefore is compensable FLSA worktime. It remains to be seen what consensus ultimately develops in the courts.

### **Review Your Uniform and Pay Policies**

Even though there may be some authority for treating uniform-cleaning time as non-compensable in certain circumstances, there is no guarantee that you would ultimately prevail in litigation. If you maintain a "clean-uniform" policy, be sure to consider the risks associated with such a policy and develop a process for how to treat uniform-cleaning time (as well as uniform-cleaning costs) that is consistent with your company's risk tolerance.

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For more information on uniform policies and related pay practices, contact your Fisher Phillips attorney or the author at [TBoehm@fisherphillips.com](mailto:TBoehm@fisherphillips.com) or 404.231.1400.

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