Workers Should be Paid for the Time Spent Booting Up Computers, According to Federal Appeals Court

Insights
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The Ninth Circuit Court of Appeals recently held that time spent booting up computers for call center employees at the beginning of their shift is integral and indispensable to their work and thus compensable under federal wage and hour law. The October 24 decision in *Cadena et al. v. Customer Connexx LLC* will directly impact employers on the west coast (California, Washington, Oregon, Nevada, Arizona, Montana, Idaho, Hawaii, and Alaska) but could also carry over to employers across the country. And it needs to be read in conjunction with state wage laws – which are at times stricter than federal law. What do employers need to know about this development?

Case Revolved Around Common Work Practice: Booting Up Computers

Connexx operates a call center in Las Vegas, Nevada that provides customer service and scheduling for an appliance recycling business. The call center agents work in-person at a call center and their primary responsibilities are to provide customer service and scheduling functions for customers over the phone. The employees clock in and out using Connexx's computer-based timekeeping program.

To access the program at the beginning of their shift, the employees must awaken or turn on their computers, log in using their username and password, and open up the timekeeping system. At the end of their shift, the agents wrap up their calls, close out of programs, and clock out and then log off or shut down their computers.

The call center agents alleged that they were not paid for the time spent booting up their computers prior to logging in or closing down their computers after clocking out. The lower court ruled in favor of the employer, holding that "starting and turning off computers and clocking in and out of a timekeeping system are not principal activities" because Connexx did not hire employees for that purpose, but instead "to answer customer phone calls and perform scheduling tasks."

What Does Federal Law Say About This Activity?

The Fair Labor Standards Act (FLSA) requires employers to pay employees one and one-half times their regular pay for any time worked over 40 hours per workweek. Under the Portal to Portal Act – another federal statute that limits the reach of the FLSA – employers are not required to compensate employees for:

- Walking, riding, or traveling to and from the actual place of performance of the principal activity or activities which such employee is employed to perform; or
- Activities which are *preliminary* to or *postliminary* to said principal activity or activities,

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 they cease such principal activity or activities.

Activities performed either before or after an employee's regular work shift are only compensable under the FLSA if those activities are an integral and indispensable part of the principal activities for which the employee is employed. Activities that are "integral and indispensable" are considered "principal activities." The first principal activity of the day begins the workday and any time that occurs after the beginning of the employee's first principal activity and before the end of the employee's last principal activity is covered by the FLSA and is therefore compensable time.

The integral and indispensable test is tied to the productive work that an employee is employed to perform and does not include all activities an employer requires. An activity is therefore integral and indispensable to the principal activities that an employee is employed to perform if it is an intrinsic element of those activities and one with which the employee cannot dispense if they are to perform their principal activities.

Applying these standards, the Supreme Court has held that preparation of equipment necessary to perform principal activities is compensable. For instance, time spent changing clothes at the beginning of a shift or showering after at a battery factory has been deemed indispensable and therefore compensable because the workers were exposed to toxic dust.

Appeals Court Rules in Favor of Workers…

Applying the principles above, the Ninth Circuit panel identified the call center agents' principal duties as "answering customer phone calls and performing scheduling tasks." The key question therefore was whether turning on and off the computers was integral and indispensable to the agents' principal activities of receiving customer phone calls and scheduling appliance pickups.

The court concluded that the agents' duties could not be performed without turning on and booting up their work computers, and having a functioning computer was necessary before employees could receive calls and schedule appointments. It noted that the issue here was not booting up the computers to access the company's timekeeping system. Rather, it was the necessary access to the programs that allowed the call center agents to perform their principal activities of answering customer calls and scheduling pickups. Accordingly, turning on the computers was integral and indispensable to the agents' duties and is a principal activity under the FLSA.

…But Provides Hope for Employers

The court recognized, however, that not all activities an employer requires as a part of an employee's duties are compensable. Only when the required activity bears such a close relationship to the employees' principal duties that eliminating it would prevent them from performing their principal duties does the activity become "compensable." In line with this limitation, the court stated that, under these facts, shutting down the computer was not considered compensable under this theory because it was not integral and indispensable to the call center agents' ability to conduct calls.

However, the court left to the district court on remand to determine whether shutting down the computers is compensable under *any* circumstances. The court also left to the lower court to decide on remand whether the time spent booting up and down the computers is not compensable under the *de minimis* doctrine.

Additionally, the court indicated in a footnote that its holding is limited to the facts of this case – employees using employer-provided computers to perform their duties while working at a central worksite. It specifically stated that it offered no opinion on whether the same time would be compensable under the FLSA if the employees worked remotely or used their personal computers to perform these duties.

Takeaway for Employers

Although the Ninth Circuit deemed booting up computers was compensable, the holding was limited to this particular set of facts. Significantly, the panel clarified that their conclusion was not related to employees needing to boot up computers in order to access the employers' timekeeping system. Rather, in this particular instance, employees could not complete any of their work (receiving calls and scheduling pickups) without access to the computer.

Employers should consider reviewing the activities employees may need to undertake prior to beginning their principal work and whether they are integral and indispensable to their work – and therefore could be considered compensable under federal law.

Moreover, note that some states may be stricter in what time is considered "compensable" under their laws. In California, for example, there is a broader definition of what is considered "hours worked" and the California Supreme Court has made clear that neither the state Labor Code nor the Wage Orders have adopted the de minimis doctrine under the FLSA. You can read our alert on the *Troester* case explaining the distinction here.

Conclusion

We will monitor these developments and provide updates as warranted, so make sure that you are subscribed to Fisher Phillips' Insights to get the most up-to-date information direct to your inbox. If you have questions, consult with your Fisher Phillips attorney, the authors of this Insight, or any member of our Wage and Hour Practice Group.

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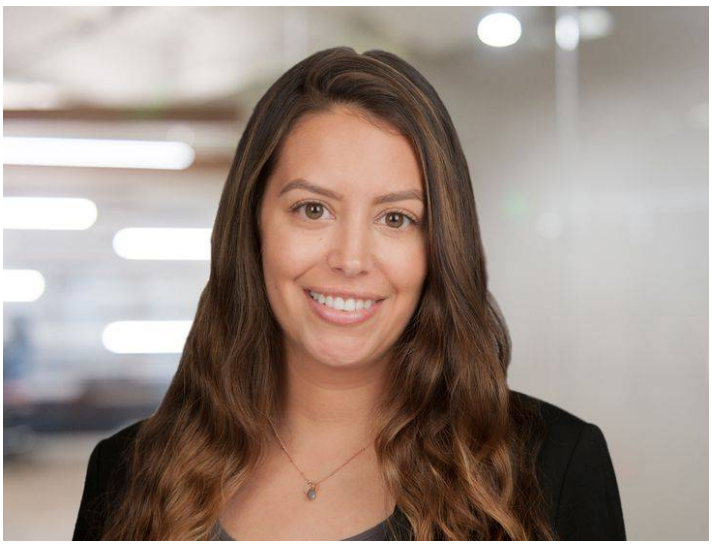

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