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FP SNAPSHOT FOR MANUFACTURERS: \$22M VERDICT REMINDS MANUFACTURERS TO PAY FOR ACTUAL DORNING AND DOFFING TIME

Insights
Feb 14, 2025

Welcome to this edition of the FP Snapshot on the Manufacturing Industry, where we take a quick snapshot look at a recent significant workplace law development with an emphasis on how it impacts employers in the manufacturing sector. This edition is devoted to a recent court decision upholding one of the largest wage and hour verdicts in Department of Labor (DOL) history. This development will have a particular impact on manufacturers whose employees don and doff protective uniforms and equipment, so read on to find out what you need to do as a result.

Snapshot Look at Record-Setting Donning and Doffing Verdict

The DOL filed a Fair Labor Standards Act (FLSA) lawsuit against East Penn Manufacturing Company, which makes and recycles lead-acid batteries, alleging the company failed to pay employees for all time spent changing and showering before and after shifts. East Penn reportedly provided a grace period for these activities but did not record the actual time spent.

A federal court granted summary judgment in favor of the DOL, determining that changing and showering were integral and indispensable to the workers' principal activities. The jury awarded a record-setting verdict of \$22.25 million in back pay to hourly workers.

On appeal, East Penn argued it complied with the FLSA by paying for "reasonable" donning and doffing time rather

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than actual time. The company also argued that pay for actual time would reward employees for lollygagging and tending to personal matters during their change and wash-up time.

The 3rd Circuit Court of Appeals did not find East Penn's arguments persuasive. It affirmed the lower court's ruling and held that employers must pay for the actual time employees spend on work-related activities, including donning/doffing time, not just a reasonable amount of time.

[For a deeper dive into the situation, you can read our full Insight here.](#)

What Do Manufacturers Need to Know?

- Manufacturers need to carefully evaluate, with the assistance of employment counsel, whether time spent changing into and out of uniforms and equipment is compensable time.
- While employees may be disciplined for dragging their feet during compensable changing and cleaning times, they must still be paid for *actual* time spent performing such work activities.
- The workplace conditions and jobs functions of each manufacturer are unique, so there is no operational "playbook" on which to draw when evaluating preliminary and postliminary activities. Manufacturers should perform a thorough, honest evaluation of all the discrete activities in which employees in a factory or plant setting might engage, even and especially if said activities are perceived to be of marginal significance. Such activities may leave manufacturers vulnerable to problems and significant liability.

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