



New Nevada Law Excludes Certain Pre- and Post-Shift Activities as Compensable Time

Insights

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If you've ever wondered whether those few minutes before employees clock in really count as work, Nevada lawmakers just made that answer much clearer. After the state Supreme Court's held on October 30 that Nevada had not adopted the federal Portal-to-Portal Act (PPA) or its limits on compensable working time, the state Legislature immediately responded by passing a measure confirming that employers do not have to pay employees for certain activities performed before or after a shift. The Governor just signed it on November 20 and it took immediate effect. This Insight explains what the Supreme Court decided, why the Legislature took quick action, what this means for your business, and why this issue will continue to matter.

What Did the Supreme Court Decide?

In the *Amazon Services, LLC v. Malloy* ruling, the Nevada Supreme Court ruled that, unlike federal law, Nevada law does not permit employers to skip paying for certain pre- and post- shift activities.

The court held that, under existing Nevada law, employers must pay for each hour an employee works. There are a few specific exceptions in state statutes, such as those for employee agreements that exempt sleep periods for 24-hour shifts. The *Amazon* ruling stated that Nevada's exceptions did not cover the broader types of unpaid work listed in the federal PPA.

This meant that employer-required pre-shift COVID screenings (and other similar actions) were not automatically excluded from pay under Nevada law. This holds true even if federal law does not require payment for similar activities. The court said Nevada's law is more expansive. It does not automatically incorporate the federal carveouts, such as time spent traveling from the worksite entrance to the actual place where principal work activities are performed.

The *Amazon* ruling meant that employers were left exposed to claims from employees that they should be compensated for certain activities at the margins of the workday, like security screenings or changing in and out of clothes that employees are permitted to bring from home.

How Did the NV Legislature Respond?

To address confusion about what counts as compensable work, the Legislature took quick action after the ruling. Lawmakers suspended normal rules to allow SB 8 to be declared an emergency

under the Nevada Constitution. This allowed lawmakers to speed the bill through a special session and send it to Governor Lombardo for signature right away – which he did on November 20.

The new Nevada law adopts the exceptions for compensable work activities in sections 2 and 4 of the Portal-to-Portal Act. It also ensures Nevada's overtime pay rules mirror the federal Fair Labor Standards Act (FLSA) for overtime and for the calculation of the regular rate of pay.

By adopting these FLSA provisions, the Nevada Legislature signaled that state overtime laws should match the federal standards. The goal is to avoid future unexpected court rulings treating Nevada's overtime requirements as inconsistent with federal law. The Nevada law on calculation of the regular rate of pay did not greatly differ from the FLSA but now employers will have the same obligations under both state and federal law.

Are There Any Exceptions?

Nevada law already required an employer to pay an employee for each hour worked with very few exceptions. However, this new law made it clear that an employer cannot require an employee to work unpaid when the employee is donning (putting on) or doffing (taking off) a uniform or personal protective equipment that cannot be brought or worn from home.

This donning and doffing requirement does not apply if there is a collective bargaining agreement (CBA) in place that specifically addresses the issue. Section 3(o) of the FLSA provides that time spent changing clothes or washing at the start or end of the workday is not counted as hours worked if a valid CBA excludes it, either through its express terms or through an established custom or practice under that agreement. In other words, if the CBA states that clothes-changing time is not compensable, the employer does not have to pay the employees for that time if the CBA applies to the employees.

Keep in mind that donning and doffing is not the only situation where preliminary or post-shift tasks may be compensable. These activities must generally be intrinsic to an employee's principal duties and necessary to perform them. For instance, if a functional computer is essential to the job, then powering it up may be considered indispensable to the employee's work.

Does the Law Apply to Existing Wage Claims?

Yes, the new law, including the PPA/FLSA exclusions, applies to cases already in court and those filed after the law takes effect. These exclusions will apply to events up to October 31, 2029.

Why On or Before October 31, 2029?

This statute will expire, or "sunset," on October 31, 2029. On that date, the PPA/FLSA exclusions end automatically. Afterward, employers and employees follow the original statute or any statute then in force.

It is fully expected that employers will press for the sunset provision to be repealed and the new law become permanent during or before the 2029 legislative session. Employers should carefully monitor legislative developments through then and be prepared to properly account for employee time worked.

What Should Employers Do?

- **Evaluate Pre- and Post-Shift Activities:** Review all required tasks employees perform with support from employment counsel before and after their shifts to ensure they're properly paid. This includes whether time spent putting on or removing required uniforms or gear counts as compensable work time.
- **Carefully Review Policies:** Carefully examine your policies, procedures, and pay practices, including whether you currently ensure that the amount you pay hourly employees equals or exceeds the actual time spent working. This includes an honest evaluation of all the discrete activities in which employees might engage in work, including changing into uniforms, even and especially if said activities are perceived to be of marginal significance. For uniforms and PPE, you should determine if clothing or equipment are mandatory rather than optional for each role and make sure that distinction is clearly communicated to employees.
- **Track and Record All Hours Worked:** Make sure you are properly accounting for employee time worked. This can help you avoid potential recordkeeping violations under the FLSA and state wage and hour laws – and defend lawsuits if filed.
- **Train Frontline Supervisors on Wage and Hour Rules:** Knowledgeable supervisors can often spot and correct potential issues before they become a bigger problem.
- **Work with Employment Counsel:** Wage and hour compliance can be an expensive area of employment law and the cost of getting it wrong adds up fast. Partnering with employment counsel before a problem arises helps you spot risks early, proactively update policies, and helps document practices in a way that can protect a business. Early guidance is far less expensive than defending a lawsuit or a labor board complaint. It also prepares a business to respond quickly if a claim appears.
- **Make Your Voice Heard:** Contact your state representative and urge them to repeal the sunset provision and make the new law permanent.

Conclusion

If you have any questions, contact your Fisher Phillips attorney, the authors of this insight, or any attorney in our [Las Vegas office](#) for guidance. Make sure you are subscribed to [Fisher Phillips' Insight System](#) to stay up to date on employment issues.

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