

# NO PAY FOR SECURITY CHECKS: SUPREME COURT

Insights

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Today, the U.S. Supreme Court unanimously held that employees are not entitled to compensation for time spent waiting for and participating in mandatory security screenings at the end of their shifts. The decision reached by the Supreme Court is a victory for the increasing number of employers nationwide who screen employees to prevent theft. In addition, the Court provided much-needed guidance in an area of wage and hour law that has historically been the subject of litigation: when does the compensable workday begin and end? *Integrity Staffing v. Busk*.

## Facts Of The Case

Integrity Staffing Solutions provides warehouse staffing and space to clients such as Amazon.com. Jesse Busk and Laurie Castro, were employed by Integrity Staffing as hourly warehouse employees to fill orders placed by Amazon.com customers. As part of its measures to prevent employee theft, Integrity Staffing requires its employees to undergo a security screening at the end of their shifts for which they are not compensated.

Busk and Castro allege that the security screening process, including wait time, takes up to 25 minutes per day. As a result, they filed a collective action in a federal district court claiming that they were owed unpaid wages for their time spent waiting for and going through the security screening. The U.S. Court of Appeals for the 9<sup>th</sup> Circuit agreed that Busk and Castro stated a valid claim for relief under the FLSA. Integrity Staffing appealed the decision to the Supreme Court, which issued its decision today.

## Issues Before The Court

It is fairly common knowledge that the Fair Labor Standards Act (FLSA) requires employers to compensate their employees a minimum hourly wage for their work and one and one-half times their regular wage for hours worked in excess of 40 per

week. But while the mandate to compensate for all work performed is clear, how to define when the compensable workday begins and ends is a recurrent issue that federal courts have been grappling with for decades.

The statute itself provides some guidance. Specifically, it establishes that employers do not have to compensate their employees for traveling to the “actual place of performance of the principal activity or activities which such employee is employed to perform” or for acts that are “preliminary” or “postliminary” to those principal activities.

The Supreme Court has previously explained that preliminary and postliminary activities which are “integral and indispensable” to a principal activity are, in essence, principal activities and compensable under the FLSA. As result, the key issue when determining whether or not preliminary or postliminary activity is compensable under the FLSA, is whether the activity is one which is “integral and indispensable” to a principal activity. If so, the FLSA provisions apply. Making this determination has historically proven difficult for many federal courts and has led to various, sometimes conflicting, decisions across the country.

Integrity Staffing argued that the security screening is a classic postliminary activity that is neither integral nor indispensable to the work of the warehouse employees. It argued that because the screening process has no relationship with what the employees ordinarily do while on the job, it is not related to a principal activity and is not compensable. Integrity Staffing asserted that the screening is simply a logical part of the exit process and is similar to a requirement that an employee clock out after finishing a day’s shift, an activity which is not compensable.

Integrity also relied on several federal court decisions which held that airline employees, for example, are not entitled to compensation for time spent going through airport security before their shifts. It cautioned the Court that a decision holding that the time was compensable could open the floodgates to litigation nationwide regarding similar practices.

Busk and Castro asserted that because the security screening is mandated by, and only benefits Integrity Staffing, it is a part of their work assignment and, thus, a principal activity for which they must be compensated. They argued that the screening was not simply a part of the exit process and instead analogized it to time spent engaging in a drug screen, (an activity which is compensable).

Busk and Castro distinguished previous court decisions which held that time spent going through security screenings is non-compensable by noting that in those cases, the security screenings applied to all individuals who entered the facilities (not just employees) and that they were done for safety reasons, which benefit everyone, not just the employer. They further emphasized that the significant

amount of time spent engaged in the security screening distinguished it from clocking out after finishing a shift, and further set the facts at hand apart from previous court decisions.

### **The Decision Of The Court**

The Supreme Court unanimously held that time spent engaged in the security screening is not compensable. It clarified that a preliminary or postliminary activity is only compensable if it is an intrinsic element of the principal activity that an employee is hired to perform and one which the employee cannot dispense if he is to perform his principal activity.

The Court agreed with Integrity Staffing that, the act of going through a security screening is not sufficiently related to the duties of a warehouse worker to make the time spent doing so compensable. The Court reasoned that Busk and Castro were hired to retrieve products from warehouse shelves and package those products for shipment. The security screening process could have been eliminated without impairing the employees' ability to do their work. Therefore, the time spent going through the security screening cannot be considered an intrinsic element of the work and is not compensable.

The Court explicitly rejected the arguments proffered by the employees that the time was compensable because Integrity Staffing required the security screening and because it was for the employer's benefit. The Court explained that a test which turns on those two factors would be overbroad and capture activities that the law was enacted to preclude.

### **Implications For Employers**

The Supreme Court's decision has appropriately narrowed the definition of compensable preliminary and postliminary activities and avoided a potential flood of wage claims for employers nationwide. Despite this opinion, it is imperative that employers analyze any preliminary and postliminary activities engaged in by their employees to determine whether they are compensable based on the Court's rationale.

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