

Human Resources Bulletin



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USDOL Issues Guidance on Donning and Doffing Rules

An Administrator's Interpretation letter recently issued by the United States Department of Labor (USDOL) concludes that an employer is responsible under the Fair Labor Standards Act (FLSA) for paying an employee for time spent putting on (donning) and taking off (doffing) personal protective equipment even though time spent "changing clothes" is excluded from compensable time under a collective bargaining agreement (CBA). The Administrator's Interpretation also concludes that time spent putting on and taking off work clothes, even when the time is excluded from compensable time under a CBA, could still begin or continue the "continuous workday" for purposes of determining what are compensable work activities. Although the USDOL letter specifically addresses the special "donning and doffing" rules that apply to unionized employers, the analysis has implications for all employers regarding the beginning and ending of compensable work time.

Generally, the FLSA requires employers to pay employees for all hours worked during the workday, beginning the moment an employee engages in a principal duty (*i.e.*, a task the employee is employed to perform) or an activity integral and indispensable to a principal duty. The workday continues until the final principal duty or integral and indispensable activity of the day. If an employee is relieved from duty mid-day, such as for an unpaid lunch period, the continuous workday ends and does not begin until the employee engages in another principal duty or integral and indispensable activity.

However, the FLSA provides that time spent "changing clothes or washing at the beginning or end of each workday" is excluded from compensable time if the time is excluded pursuant to "the express terms or by custom or practice under a collective bargaining agreement."¹

The USDOL relied upon legislative history and several court decisions to conclude that "clothes" does not include personal protective equipment; therefore, the "changing clothes" exemption does not extend to donning and doffing personal protective equipment worn by employees that is required by law, the employer or the nature of the job.

The USDOL also addressed whether changing clothes (even when that activity is excluded from compensable time pursuant to the express terms of, or custom or practice under a CBA) can nonetheless be a "principal activity" that begins the continuous workday upon conclusion of putting on clothes. The United States Supreme Court has held that a "principal activity" is one that is integral and indispensable to the performance of the employee's daily tasks, and that activities occurring after the first principal activity and before the last principal activity are compensable.² The USDOL determined that putting on work clothes may be a principal activity, even though it may be a non-compensable activity in accordance with the "changing clothes" exemption. As a result, in a situation where changing clothes is considered a principal activity, all activities that occur after employees change into their

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work clothes or before they change out of their work clothes (such as walking to and from a work station, waiting in line to punch a time clock, or waiting to work) will be compensable time.

Conclusion

Unionized employers must be aware of the USDOL's new interpretations with respect to the donning and doffing of personal protective equipment. Although it is not clear how much weight courts will assign to Administrator Interpretation letters, there are some court decisions that support the USDOL's interpretation that putting on personal protective equipment is not the same as putting on work clothes. There are still other court decisions that support the USDOL's determination that changing work clothes may be a principal activity in certain circumstances. As a result, unionized employers may be required to pay their employees for donning and doffing personal protective equipment, and for activities that occur

immediately after employees change into their work clothes and immediately before they change out of their work clothes, even though a CBA excludes the actual changing time from compensable time. All employers, whether union or non-union, should review their policies regarding payment to employees for time spent putting on and taking off clothes and personal protective equipment to ensure that they are in compliance with the donning and doffing and FLSA compensable time regulations.

Footnotes

¹29 U.S.C. Sec. 203(o).

²*IBP v. Alvarez*, 546 U.S. 21, 37 (2005).

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