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Employers Can Keep Employees on Premises Post-Shift—at a Cost

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According to a recent decision, employers who want to keep employees on their premises for security checks after they have already clocked out must pay their employees to do so—at least in Pennsylvania.

In 2013, two Amazon.com employees filed a putative class action in the Philadelphia County Court of Common Pleas against their employer, certain of Amazon's affiliates, and Integrity Staffing Solutions, Inc., seeking compensation under the Pennsylvania Minimum Wage Act ("PMWA"), 43 Pa. Cons. Stat. § 333.101 *et seq.* for time spent undergoing a mandatory security check after their shifts had already ended. The plaintiffs worked in a warehouse in Pennsylvania where they performed tasks related to fulfilling customer orders placed on Amazon. At the end of their shifts, the plaintiffs were not allowed to immediately leave the premises, as they were required to remain at the warehouse to proceed through a screening process that included walking through a metal detector. If the alarm went off, the worker would be subject to a secondary screening process where a security guard would search the worker's bags and personal items. The plaintiffs alleged that the entire screening process could take up to twenty minutes, or even more if there were delays. The defendants did not compensate the workers for any of this time.

The defendants removed the case to the U.S. District Court for the Eastern District of Pennsylvania. Then, in 2014, the U.S. Judicial Panel on Multidistrict Litigation transferred it to the Western District of Kentucky where it was consolidated with a number of cases involving similar claims—but based on the laws of other states (*e.g.*, Kentucky, California, Arizona, Nevada)—that were already pending.

The defendants moved for summary judgment arguing that the U.S. Supreme Court's interpretation of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201 *et seq.*, in *Integrity Staffing Solutions, Inc. v. Busk* applies to the PMWA. There, the Court held that "an employee's time spent waiting to undergo and undergoing [an antitheft] security screening . . . is not compensable" under the FLSA as amended by the Portal-to-Portal Act, 29 U.S.C. § 251 *et seq.* The Court reached this conclusion in part because the Portal-to-Portal Act exempts employers from liability for claims based on "activities which are preliminary to or postliminary to said principal activity or activities," and, in the Court's view, security screenings are postliminary activities and not the "principal activity or activities which [the] employee [in question] is employed to perform." The Western District of Kentucky decided to rely on the Court's interpretation of the FLSA as guidance in its interpretation of the PMWA because

the federal and state provisions in question, specifically the meanings of “compensable time,” were similar to each other. Thus, the district court concluded the time spent waiting for and undergoing post-shift security screenings were not compensable under the PMWA, and granted the defendants’ motion for summary judgment.

In 2018, the plaintiffs appealed the decision and moved for the Sixth Circuit to certify a question of law to the Pennsylvania Supreme Court. The Sixth Circuit granted the motion in 2019 and certified the following two questions to the Pennsylvania Supreme Court:

1. Is time spent on an employer’s premises waiting to undergo and undergoing mandatory security screening compensable as “hours worked” within the meaning of the PMWA?

2. Does the doctrine of *de minimis non curat lex* apply to bar claims brought under the PMWA?

The Pennsylvania Supreme Court issued its opinion in July 2021. With respect to the first question, the state court answered in the affirmative. First, the state court found that Pennsylvania law provides greater wage protections than federal law, and therefore, declined to apply the U.S. Supreme Court’s interpretation of the FLSA to the PMWA because Pennsylvania’s legislature never adopted the Portal-to-Portal Act’s classification of what activities are exempt from compensation. The state court found this to be “wholly consistent with [the legislature’s] clear and unequivocal policy statement . . . in the PMWA, that its overarching purpose is to address ‘[t]he evils of unreasonable and unfair wages,’ and to ameliorate employer practices which serve to artificially depress those wages.” Then, the state court turned to the text of the statute under 43 Pa. Cons. Stat. § 333.104, which provides, “Every employer shall pay to each of his or her employe[e]s wages for all hours worked . . . .” Because the PMWA does not define “hours worked,” the state court looked to state regulation under 34 Pa. Code § 231.1(b), which defines the phrase as “time during which an employee is required by the employer to be on the premises of the employer . . . .” Applying this definition to its interpretation of the PMWA, the state court concluded “all time spent by the employees waiting to undergo, and undergoing, the security screenings constitutes ‘hours worked’ within the meaning of Section 231.1 and, thus, within the meaning of the PMWA.”

With respect to the second question, the state court answered in the negative. Pursuant to the *de minimis* doctrine, a court may “disregard trivial matters that serve merely to exhaust the court’s time.” As applied to the FLSA, this doctrine can prevent an employer from needing to compensate an employee for “insubstantial and insignificant” time spent in preliminary activities. The state court declined to apply this exception to the PMWA and found that doing so would be inconsistent with the statute’s legislative purpose and intent, which is to ensure that an employee is compensated for “all hours worked” and “*any* portion of the hours worked by an employee does not constitute a mere trifle.”

Following the state court’s rulings, the Sixth Circuit vacated the decision of the Western District of Kentucky and remanded the case for further proceedings.

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