

Seventh Circuit Rules Changing Time Before and After Meals Non-Compensable

Article By:

Noel P. Tripp

In the latest in a [series of appellate decisions](#) addressing “donning and doffing” issues, the Court of Appeals for the Seventh Circuit ruled that time spent changing at the start and end of a non-compensable meal break is not compensable time under the FLSA. *Mitchell v. JCG Indus.*, 2014 U.S. App. LEXIS 5099 (7th Cir. Mar. 18, 2014).

In *Mitchell*, the question was whether employees who worked at a chicken processing plant were entitled to compensation for time spent donning and doffing various sanitary gear (e.g., jacket, gloves, earplugs, hair net) before and after lunch. The FLSA permits employers and their union to exclude from compensable time, time spent changing clothes “at the beginning or end of each workday.” *Mitchell*, 2014 U.S. App. LEXIS 5099 at *5 (*quoting* 29 U.S.C. § 203(o)). The Plaintiffs in *Mitchell* argued the exclusion did not apply because the time spent changing into their protective gear occurred during the workday (i.e. lunch) and not at the beginning or end of the workday. The Court rejected this argument and held the exclusion applied because the “workday” refers to “the period of time in a day during which work is performed” and that “workers given a half-hour lunch or other meal break from work are in effect working two four-hour workdays in an eight-and-a-half-hour period.”

Mitchell also held, alternatively, that the time at issue was *de minimis* or simply part of the meal break, which the court explained was not “work” because it was primarily for the benefit of the employee, mirroring the arguments made by Defendant in its motion to dismiss. *Id.* at *10-22 (“the employer does not provide a meal break so that the employees can don and doff protective clothes and equipment, but so that they don’t have to work eight hours straight without food. The meal break is for the employees’ benefit. The clothes changing is incidental to their eating lunch”). Opining that “common sense has a place in adjudication,” in evaluating the *de minimis* argument, the Court also disclosed that it had its staff engage in a controlled experiment, putting on and removing the gear in question, and found that it took a matter of a few seconds or minutes at most.

Mitchell provides important guidance to employers regarding the compensability of certain activities before and after meal periods and the *de minimis* doctrine. Employers must continue to analyze the scope of compensable time and the [meal and rest break requirements of the various states in which they operate](#).

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