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Labor and Employment Law

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Supreme Court Decides the Meaning of "Changing Clothes" Under the Fair Labor Standards Act

On January 27, 2014, the U.S. Supreme Court issued a unanimous decision clarifying the meaning of "changing clothes" under the Fair Labor Standards Act ("FLSA"). In *Sandifer v. United States Steel Corp.*, the Supreme Court adopted a fairly broad definition of the phrase "changing clothes," which should provide employers with some comfort that provisions of a collective bargaining agreement excluding clothes-changing time from compensable hours worked will likely be applied to time spent by employees donning and doffing most forms of protective gear.

In general, the FLSA requires employers to pay employees for time spent donning and doffing protective clothing and equipment, if the employer requires employees to wear such protective clothing and equipment, and if the employee must change into and out of the protective clothing and equipment at the work site. However, Section 203(o) of the FLSA provides that such time is not compensable if the employer and the representative of the employer's employees have agreed to a provision in their collective bargaining agreement to exclude from hours worked "time spent in changing clothes or washing at the beginning or end of each workday."

In *Sandifer*, a group of U.S. Steel employees contended that even though their collective bargaining agreement excluded time spent "changing clothes" from compensable work time, they should nevertheless be compensated for such time because many of the items they were required to wear were protective in nature. The employees argued that the items they were required to wear should not be considered "clothes" under the FLSA because those items are intended to protect against workplace hazards. The employees also argued that, by putting on those protective items over their own clothes (rather than substituting those protective items for their own clothes), they were not engaged in "changing" clothes under the FLSA.

The Supreme Court refused to interpret the phrase "changing clothes" as narrowly as the employees urged. With respect to the definition of "clothes," the Supreme Court examined the dictionary definition of the term that existed at the time Section 203(o) of the FLSA was enacted, and held that the term includes all items that are designed to cover the body and are commonly regarded as articles of dress.

The Supreme Court further held that the definition of "clothes" does not necessarily exclude items that are worn exclusively for protection, as long as those items are designed to cover the body and are regarded as articles of dress. With respect to the definition of "changing," the Supreme Court again examined the dictionary definition of the term that existed at the time Section 203(o) was enacted, and held that the term can mean either substituting or altering. Accordingly, the Supreme Court concluded that time spent by employees altering their garments by putting on and taking off articles of dress constituted "changing clothes" under the FLSA, and that the employees were not entitled to compensation for such time based on the exclusion set forth in the collective bargaining agreement.

Applying these definitions, the Supreme Court considered 12 items of protective gear: a flame-retardant jacket, a pair of pants, and a hood; a hardhat; a snood (which is a hood that covers the neck and upper shoulder area); wristlets; work gloves; leggings; metatarsal boots; safety glasses; earplugs; and a respirator. The Supreme Court found that the first nine items qualified as "clothes," but the last three did not. Thus, the Supreme Court was left to consider the question of whether courts should tally the minutes spent donning and doffing each item, in order to deduct the time spent donning and doffing the non-clothing items from non-compensable time. Recognizing that "it is most unlikely Congress meant Section 203(o) to convert federal judges into time-study professionals," the Supreme Court stated that courts should analyze whether the time period at issue can, on the whole, be characterized as "time spent in changing clothes or washing." The Supreme Court articulated a "vast majority" standard for courts to use in their analysis:

> "If an employee devotes the vast majority of the time in question to putting on and off equipment or other non-clothes items (perhaps a diver's suit and tank) the entire period would not qualify as 'time spent in changing clothes' under Section 203(o), even if some clothes items were donned and doffed as well. But if the vast majority of the time is spent in donning and doffing 'clothes' as we have defined that term, the entire period qualifies, and the time spent putting on and off other items need not be subtracted."

The Supreme Court concluded that the employees of U.S. Steel spent a vast majority of the time in question donning and doffing items that fell within the definition of "clothes," and that their time was non-compensable under the terms of the collective bargaining agreement. Although courts addressing this issue in the future will be bound by the broad definition of the phrase "changing clothes" set forth in the Supreme Court's *Sandifer* decision, courts will be left to analyze on a case-by-case basis whether employees spend a "vast majority" of the time in question donning and doffing items that qualify as clothes or non-clothes items.

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