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## What Is Compensable Working Time And What Is Not — Supreme Court Makes Ruling

The Supreme Court has created the possibility that employers will need to pay workers for pre- and post shift tasks they may have previously thought did not qualify as compensable time.

In a unanimous decision on November 8, the U.S. Supreme Court decided *IBP Inc v. Alvarez*, a “working time” case involving meat and chicken processors who sought pay for activities occurring before and after their official work shifts. The court found that the employees should have been paid for time they spent walking to their work stations after they put on required protective gear at the beginning of their shifts and for time spent walking back to their changing areas to take off the equipment at their shifts’ end.

Time spent waiting to put on the required equipment was deemed not payable; although everything in between including the time spent waiting to take off the equipment was ruled compensable.

To understand the Court’s ruling one must look to the language of the Fair Labor Standards Act (FLSA) “Portal-to-Portal Act”, which in essence provides that employees must be paid for their principle activities – but not for certain travel and other tasks that occur before or after the performance of these principle activities.

### **Court Ruling: Walking Time**

The Portal-to-Portal Act passed in 1947, limits employer liability for certain time that might otherwise be considered working time, stating that employers are not liable under the FLSA (in the absence of custom or practice) for paying their workers for the following activities: “walking, riding, or traveling to and from the actual place of performance of the principal activity or activities which such employee is employed to perform,” and “activities which are preliminary to or

postliminary to said principal activity or activities, which occur either prior to the time on any particular workday at which such employee commences, or subsequent to the time on any particular workday at which he ceases, such principal activity or activities.”

Key to the case was the finding that the putting on and taking off of the required safety equipment qualified as principal activities - - and that tasks falling between the time of the putting on of the required gear and taking off of said gear were part of the FLSA “workday”, not affected by the Portal-to-Portal Act.

### **Court Ruling: Waiting Time**

What did the court find as to the waiting time, the time employees spent waiting to put on and take off the required safety equipment? The Court found that the time spent waiting to put on the gear at the beginning of a shift was preliminary activity. Because this activity would occur before the performance of the first principle activity, it falls outside the FLSA “workday” and does not qualify for compensation. Because time spent waiting to take off the gear occurs during and before the end of the FLSA “workday”, it qualifies for compensation.

### **What This Case Means to Counties**

Based on this decision, employers should take a closer look to see when an employee is required to put on specialized protective gear or engage in pre- and post-shift activity. Then the employer should determine if those tasks are integral and indispensable activities. The activities may fall within the workday and thus may be compensable in light of the Courts ruling.

For more information, consult the Employers Guide to the Fair Labor Standards Act.

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