CLIENT ALERT: Supreme Court Rules that Collective Bargaining Agreements Can Limit Pay for Time Spent Donning and Doffing Protective Gear

Under the Fair Labor Standards Act, time spent "changing clothes" or "washing up" at the beginning and end of the day is compensable if it is directly related to the work the employee is required to perform and is therefore an integral part of the employee's principal activity. However, section 203(o) of the Fair Labor Standards Act, 29 U.S.C. §203(o), provides an exception to this rule and allows parties to a collective bargaining agreement to decide whether workers will be paid for such time. In *Sandifer v. United States Steel Corp.*, (a case relevant only to unionized workforces), the U.S. Supreme Court held that adding layers of protective gear over street clothes qualifies as "changing clothes" for steel workers and, as such, is an appropriate subject of collective bargaining under §203(o).

In *Sandifer*, a group of Indiana steel workers sought back pay for time they spent donning and doffing the protective gear required for working in the hazardous environs of steel plants. The collective bargaining agreement which covered their employment specifically described this time as non-compensable. However, the steel workers argued that the protective gear they put on over their street clothes did not qualify as "clothes" and adding layers of gear did not qualify as "changing." Thus, they argued, such time would not be an appropriate subject of bargaining and should have been compensable. All nine Supreme Court Justices disagreed.

The Court began by seeking to determine the "ordinary, contemporary, common meaning" of the word "clothes." Citing dictionaries from the time of §203(o)'s passage, the Court held that clothes are not "essentially anything worn on the body" but rather *items that are "both designed and used to cover the body and are commonly regarded as articles of dress."* (Note that this definition excludes some wearable pieces of equipment and work related devices.) The Court further concluded that the ordinary, contemporary, common meaning of "changing" could include "to substitute" (as the steel workers argued) or "to alter," and that the act of adding protective gear was an "alteration." Thus, the Court held that the protective gear in question constituted "clothes" and donning and doffing the protective gear over street clothes in this case qualifies as "changing clothes" and was an appropriate subject for collective bargaining under §203(o).

The Court acknowledged that protective gear sometimes includes items that are not "commonly regarded as articles of dress" such as safety glasses and earplugs. Rather than parse the time spent on various activities, the Court clarified that the correct approach is to look at the process as a whole. If the "vast majority" of time is spent donning and doffing "clothes" then the entire period qualifies as "time spent in changing clothes or washing." Since nine of the twelve items of protective gear in this case fell under the definition of clothes, the time spent on the three items that are not clothes was minimal and need not be treated differently.

Employers should contact their MBJ attorney with questions regarding how these issues impact them and with any questions regarding compensable time and collective bargaining agreements.

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