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U.S. SUPREME COURT WILL DECIDE WHETHER TIME SPENT CHANGING CLOTHES IS COMPENSABLE WORK TIME

Generally, if an employee is required to change into work clothing as part of that employee's job, the Fair Labor Standards Act ("FLSA") requires an employer to pay the employee for the time it takes to do so. Section 203(o) of the FLSA, however, contains an exception to this general rule. The exception provides that any time spent "changing clothes or washing" at the beginning or end of each workday that is excluded from compensable time either by the express terms of or by a custom or practice under a collective bargaining agreement, is not compensable time under the FLSA.

On November 4, 2013, the U.S. Supreme Court will hear oral arguments in *Sandifer v. U.S. Steel*, a case arising out of the Seventh Circuit, to resolve disagreement among circuit courts as to what constitutes "changing clothes" within the meaning of Section 203(o). It is not clear whether the term "clothes" includes personal protective equipment or gear. In *U.S. Steel*, the employer and employees are parties to a collective bargaining agreement, which exempts changing clothing from compensable working time. The employees in *U.S. Steel* argue that they should be compensated for the time it takes to change into and out of their required work clothes because their work clothing is not actually clothing, but is more akin to personal protective gear and, therefore, does not constitute "clothes" within the meaning of Section 203(o).

Most circuit courts that have addressed this issue, including the Seventh Circuit, disagree with the employees' position and have upheld the collective bargaining exemption under Section 203(o), finding that it would be impossible to exclude all work clothing with a protective function from the Section 203(o) exemption.

The U.S. Supreme Court will be hearing the *U.S. Steel* case in the coming weeks. This is an important case to watch, not only for all employers who may be exempt from compensating employees for donning and doffing activities by virtue of their collective bargaining agreement, but for any employer whose employees change clothes as part of their jobs. Any change to the definitions of "clothing" or "changing clothing" under the current donning and doffing rules could affect all employers' current compensation policies and practices.