

EMPLOYMENT LAWSCENE ALERT: WISCONSIN SUPREME COURT ISSUES DONNING AND DOFFING DECISION

On March 1, 2016, the Wisconsin Supreme Court issued a decision in *United Food & Commercial Workers Union, Local 1473 et al. v. Hormel Foods Corporation*. The majority determined that the time employees spent putting on and taking off clothes and equipment for their jobs was “work” under the Wisconsin statutes and that employees should, therefore, be compensated for that time.

The Court took into consideration the fact that the employer’s work rules required that such clothing and equipment be worn so that the company met food and work safety regulations. Because the Court’s majority determined that the employees’ “principal activity” was producing food products and that the clothing and equipment was necessary for that production, the Court’s majority held that the putting on and taking off of these items was “integral and indispensable” to the work and should, therefore, be compensated. The dissent disagreed, based, in part, on the U.S. Supreme Court’s decision in *Integrity Staffing v. Busk*, stating that putting on and taking off the clothing was not a part of safely cleaning and canning food and, therefore, did not need to be compensated.

The Court also rejected the employer’s arguments that such time was “*de minimis*” because the case involved more than \$500 in unpaid wages per year for each employee. Additionally, the majority noted that, although the “*de minimis*” defense is frequently used under the federal Fair Labor Standards Act, no Wisconsin court has ever applied to it Wisconsin wage and hour laws.

Employers must carefully consider what pre- and post-shift activities must be compensated. Although this decision helps clarify requirements related to donning and doffing for Wisconsin employers, our advice to employers remains the same—time spent performing activities related to an employee’s duties, which includes donning and doffing protective gear that is necessary for performing an employee’s job duties, should generally be compensated.