

The Aftermath of Tyson Foods: Lessons for Employers

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The Supreme Court's recent decision in a Fair Labor Standards Act (FLSA) class action against Tyson Foods is an important reminder that employers must be aware that certain pre- or post-employment activities are compensable under the FLSA, and that failure to pay for these activities may subject the employer to liability, including overtime liability. In *Tyson Foods*, pork processing plant employees brought a lawsuit alleging that the company failed to pay them for time spent putting on and taking off their required protective gear at the start and end of shifts and meal periods. The Court found that the time the company's factory employees spent donning and doffing protective clothing and equipment was integral and indispensable to their work and was therefore compensable under the FLSA. The employees argued that when the time spent donning and doffing the protective gear was added to their weekly hours, the total amounted to more than 40 hours worked per week, resulting in unpaid overtime. Because Tyson did not keep any time records regarding the time spent donning and doffing, the employees presented representative evidence of time spent on those activities, including a study by an industrial relations expert which found the employees spent a daily average of between 18 and 21 minutes donning and doffing their protective gear. Ultimately, the Court held that in FLSA actions, to fill an evidentiary gap created by an employer's failure to keep adequate time records, it is permissible to infer hours an employee worked from a representative study as long as the study is otherwise admissible. This had become a key issue when determining whether a class action should be certified (See the Carlton Fields class action group's discussion of *Tyson Foods*

[here.](#)) This decision presents key takeaways for employers. First, employers should always try to keep adequate time records when possible, even if the employer considers the time non-compensable. Second, and most important, employers should recognize that pre- or post-employment activities are not limited to the donning and doffing of clothing or equipment, and may extend to other activities employees routinely perform. Over the past several years, non-compensable employment related tasks continue to be an area ripe for litigation. For example, employees have sued alleging that they should have been compensated for going through security screenings; answering after-hours emails, calls and texts; time spent maintaining mandated uniforms outside of regular work hours; starting computer systems pre-shift; retrieving required equipment from lockers; reviewing company memos and emails; and, opening and closing the store or branch. *Tyson Foods*' implications for other cases involving employees' required pre- or post-employment activities will depend on the facts and circumstances of the case. However, employers should take a closer look at their pay practices regarding compensable time and pre- and post-shift activities.

Related Practices

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