

Postshift security screenings compensable under Arizona law, but not federal law

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The Fair Labor Standards Act (FLSA) requires covered employers to pay employees minimum wage for all hours they work each workweek. The Arizona Fair Wages and Healthy Families Act and its governing regulations likewise require employers to pay minimum wage, again using the number of hours worked in a workweek to determine whether the minimum wage threshold is met. That all sounds pretty simple when the laws align. But consider that Arizona has set its current minimum wage at \$11 per hour, which is significantly higher than the \$7.25 per hour federal minimum wage. Employers should be aware that the rate more favorable to the employee governs.

But what happens when the laws diverge in a way that isn't as clear? Employers should be mindful that what constitutes noncompensable time under federal law may be compensable under Arizona law. Although the Arizona Supreme Court hasn't weighed in on this potential conflict between federal and state law, one federal court has ruled in favor of treating time that isn't compensable under federal law as compensable time under Arizona law.

Background

Integrity Staffing Solutions provides warehouse labor services to businesses throughout the United States, including Amazon. Integrity employs thousands of hourly warehouse workers in Arizona and elsewhere to fill orders, track merchandise, and process returns. Both Amazon and Integrity enforce a security clearance policy that requires hourly employees to undergo a daily security clearance check at the end of each shift to discover and deter

theft of the employer's property and reduce inventory "shrinkage."

The policy requires employees to clock out at the end of their shifts and then wait in line to be searched for possible warehouse items taken without permission and other contraband. The employees claim that hundreds, if not thousands, of employees clock out around the same time, and the security screening process takes approximately 25 minutes each day. Because employees are required to clock out before undergoing the security screening, they aren't compensated for the time they spend waiting in line for and then undergoing the screening.

Procedural history

In 2010, workers filed a proposed FLSA class action against Integrity in Nevada federal court on behalf of themselves and similarly situated warehouse employees. They argued they were entitled to compensation for the time they spend waiting to undergo and actually undergoing the security screenings. The initial case also asserted claims under Nevada law that aren't relevant for purposes of this article.

The federal court dismissed the workers' complaint, ruling that time they spend waiting for and undergoing security screenings isn't compensable under the FLSA. The court explained that the screenings, which occur after the employees' regular work shift, are not "integral and indispensable" to their principal activities and thus fall into a noncompensable category of postliminary activities.

The 9th Circuit reversed the workers' security-check claims. The case was ultimately heard by the U.S. Supreme Court, which ruled that the time related to

the security checks isn't compensable under the FLSA. The Supreme Court explained that the Portal-to-Portal Act narrowed the coverage of the FLSA and clarified that postshift security screenings are among the noncompensable postliminary activities under federal law. The Nevada claims were sent back to the lower court. The workers then amended their case to include claims under Arizona law for unpaid wages and overtime as well as minimum wage violations.

Again, Integrity sought and received dismissal from a federal court, this time in Kentucky, where the case was transferred and consolidated with other similar cases. The court ruled that Arizona had implicitly adopted the Portal-to-Portal Act, so the workers failed to show they were entitled to compensation under Arizona law for the postshift security screenings.

The court also ruled that the workers' minimum wage claims failed because they didn't identify any particular workweek in which they were paid less than the minimum wage. The workers appealed to the 6th Circuit, whose findings aren't generally binding on Arizona employers but carry persuasive weight in future analogous litigation.

Unpaid security screenings are work

The 6th Circuit first looked at whether the time the workers spend undergoing security screenings constitutes "work" under Arizona law. Arizona statutes fail to define "work," so the court turned to federal law, which defines "work" as "physical or mental exertion [however minimal] controlled or required by the employer and pursued necessarily and primarily for the benefit of the employer and his business." Under that definition, the court ruled, it's clear that time spent undergoing mandatory security screenings is "work" under federal law—and thus under Arizona law.

While Arizona statutes do not define "work," the regulations do define "hours worked" as "all hours for which an employee covered under the [Arizona minimum wage law] is employed and required to give the employer, including all time during which an employee is on duty or at a prescribed [workplace] and all the time the employee is suffered and permitted to work." That broad definition, according to the 6th Circuit, makes it

even more clear that time spent undergoing mandatory security screenings is "work."

No equivalent Arizona Portal-to-Portal Act

The fact that the security screenings are work didn't end the inquiry, however. The 6th Circuit was then tasked with determining whether the Arizona Legislature exempted such work from being deemed compensable, as Congress did when it enacted the Portal-to-Portal Act. In this regard, the 6th Circuit found the lower court erred in its analysis.

The 6th Circuit noted that nothing in the Arizona code incorporated the Portal-to-Portal Act. Rather, the court explained, Arizona law seems inconsistent with the Portal-to-Portal Act. The regulations provide that "no less than the minimum wage shall be paid for all hours worked," including postshift security screenings. As a result, the 6th Circuit held that Arizona law is more inclusive than the Portal-to-Portal Act in the type of work deemed compensable.

Arizona's workweek requirement

The 6th Circuit's ruling that the security screening time was compensable didn't save the Arizona workers' claims, though. Recall that the lower court had also dismissed their claims because they failed to identify a workweek in which they were paid less than minimum wage. The workers had merely alleged that they weren't compensated for all their hours worked because they weren't paid for postshift security screenings. However, they failed to demonstrate that the alleged failure to be compensated for that time dropped their compensation below the Arizona minimum wage in any workweek.

Arizona has adopted the federal workweek standard. Accordingly, to prevail on a minimum wage claim, a worker must be able to identify a workweek in which his combined wages are less than the applicable minimum wage. For that purpose, an employee's hourly wage is calculated by dividing the total compensation by the total hours worked in a given workweek (as defined by the employer). So although the 6th Circuit ruled that the postshift screening time was compensable under

Arizona law, it still upheld the dismissal of the Arizona workers' state law claims.

Lesson learned

Federal and Arizona wage and hour laws can be complex in their application to the same facts. Employers who are in compliance with federal law may very well be in violation of Arizona law. The fact that the unpaid but compensable time employees spent in security screenings didn't take their wages below minimum wage was a fortuitous outcome for Integrity.

Over the past year to 18 months, the U.S. Department of Labor and the National Labor Relations Board have flip-flopped on several pivotal employment issues. New legislation (mostly in Arizona) has increased employers' obligations to employees and created additional conflict between state and federal law. You need to stay up to date on these changes and take the necessary steps to ensure your continued compliance with both federal and Arizona employment law, including consulting with legal counsel.

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