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***U.S. SUPREME COURT:
DONNING AND DOFFING OF PROTECTIVE GEAR IS
“CHANGING CLOTHES” UNDER FLSA***

In 2007, steel workers brought a putative collective action against U.S. Steel, seeking overtime pay for time spent donning and doffing personal protective equipment that the company required them to wear because of hazards at its steel plants. The protective gear included a flame-retardant jacket, pants, a hood, a hardhat, a “snood,”¹ “wristlets,” work gloves, leggings, metatarsal boots, safety glasses, earplugs and a respirator.

Pursuant to a provision of its collective bargaining agreement with the union, U.S. Steel did not compensate employees for time spent putting on or taking off the protective equipment. That provision’s validity depended on 29 U.S.C. § 203(o), which allows parties to collectively bargain over whether “time spent in changing clothes . . . at the beginning or end of each workday” must be compensated. On January 27, 2014, the United States Supreme Court held that time spent donning and doffing protective gear by steel workers can constitute “changing clothes” and therefore was not compensable under § 203(o) of the FLSA.²

The Court began its analysis by examining the meaning of the word “clothes.” Citing the rule of statutory construction that words should be interpreted according to their “ordinary, contemporary, common meaning,” the Court observed that dictionaries from the era of § 203(o)’s enactment defined “clothes” as items that are both designed and used to cover the body and are commonly regarded as articles of dress. Noting that nothing in § 203(o)’s text or context suggested anything other than this ordinary meaning, the Court rejected the employees’ argument that the term “clothes” somehow omitted protective clothing.

The Court then considered the meaning of the term “changing.” The Court found that, while the normal meaning of “changing clothes” connotes “substitution,” at the time of § 203(o)’s enactment the phrase also carried the meaning “to alter.” Therefore, “time spent in changing clothes” includes time spent in altering dress. Whether one exchanges street clothes for work clothes or simply chooses to layer one garment over another may be a matter of purely personal choice, and §203(o) should not be read as imposing only a substitution requirement—thereby allowing workers to opt into or out of its coverage at random or at will—when another reading is textually permissible, the Court concluded. Applying these principles, the Court held that the donning and doffing of the first nine types of required gear fit within the definition of “changing clothes.” However, the safety glasses, earplugs, and respirator do not constitute “clothes” because they are not commonly regarded as articles of dress.

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Although the time spent putting on or taking off safety glasses, earplugs, and a respirator is minimal, the Court rejected the application of *de minimis non curat lex* doctrine, finding that there “is no more reason to disregard the minute or so necessary to put on glasses, earplugs, and respirators, than there is to regard the minute or so necessary to put on a snood.” Instead, the Court concluded that the question for courts is whether the period at issue can, on the whole, be fairly characterized as “time spent in changing clothes.” For example, if an employee devotes the vast majority of the time in question to putting on and taking off equipment or other non-clothes items (perhaps a diver’s suit and tank), the entire period would not qualify as “time spent in changing clothes” under § 203(o), even if some clothes items were donned and doffed as well. But if the vast majority of the time is spent in donning and doffing “clothes,” as the Court defined that term, the entire period qualifies, and the time spent putting on and taking off other items need not be subtracted.

~ By Jay P. Lechner, Jackson Lewis P.C.

Endnotes

- 1 A snood is a hood that also covers the neck and upper shoulder area. As Justice Scalia noted, “[O]n the ski slopes, one might call it a ‘balaclava.’”
- 2 *Sandifer v. U.S. Steel Corp.*, No. 12-417 (2014).

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