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### **Labor and Employment Alert: The Wait is Over: U.S. Supreme Court Unanimously Holds That Waiting in Line for Security Checks is Not Compensable**

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As we reported in [October](#), the case of *Integrity Staffing Solutions, Inc. v. Busk*, U.S. No. 13-433, has been closely watched by companies that screen their workers to prevent employee theft. Integrity Staffing required its employees to pass through a security check at the end of each shift and did not compensate them for the 25 minutes the employees claimed the process took. At issue in the case was whether the Fair Labor Standards Act (FLSA), as amended by the Portal-to-Portal Act, requires payment for the time spent waiting for and engaging in these security screenings. If the screenings were preliminary or postliminary activities, they would not be compensable. On the other hand, the screenings would be compensable if they were integral and indispensable to the employee's principal activities.

Today, the U.S. Supreme Court unanimously ruled that the employees do not have to be paid for their time spent waiting to go through security at the end of their shifts.

Writing for the Court, Justice Clarence Thomas explained:

*"An activity is integral and indispensable to the principal activities that an employee is employed to perform – and thus compensable under the FLSA – if it is an intrinsic element of those activities and one with which the employee cannot dispense if he is to perform his principal activities."* Here, the security screenings did fit within this definition.

First, Integrity Staffing did not employ its workers to undergo security screenings. Instead, they were employed to retrieve and package products in the warehouse. This shows that the security screenings were not the employees' principal activity.

Second, the security screenings were not integral and indispensable to the employees' warehouse duties. The screenings were not necessary in order for the employee to retrieve and package the products. And Integrity Staffing could have eliminated the screenings without impeding the employees' ability to do so. The fact that an employee is

required to engage in the screenings is irrelevant because whether an activity is integral and indispensable “is tied to the productive work that the employee is employed to perform.”

Justice Thomas noted that the Court’s ruling is consistent with the one held by U.S. Department of Labor since 1951.

This is an important victory for employers who were facing class action lawsuits over their security screening practices. This may not end the issue, however, as some states, like California, have laws that are more restrictive than the FLSA. Employers should consult with their Vorys lawyers to ensure that their security screenings comply with local requirements.