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Labor and Employment Alert: Supreme Court Set to Rule on Whether Security Checks Should Be Paid

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Yesterday, the United States Supreme Court heard oral arguments in *Integrity Staffing Solutions, Inc. v. Busk*, U.S., No. 13-433, which will address whether the Fair Labor Standards Act (FLSA), as amended by the Portal-to-Portal Act, requires payment for time employees spend waiting for and engaging in security screenings at the end of a shift.

The petitioners in the case, Integrity Staffing Solutions, provide warehouse space and staffing to clients. Integrity Staffing maintained a policy requiring employees to pass through a security clearance at the end of each shift, and did not compensate employees for that time. The process allegedly included waiting for up to 25 minutes to be searched; removing the employee's wallets, keys and belts; and passing through a metal detector.

The United States District Court for the District of Nevada dismissed the employees' class action claims, which were then appealed to the 9th Circuit. The 9th Circuit reversed the District Court's decision as to the end-of-shift security screenings, holding that the security clearances were necessary to the employees' primary work as warehouse employees and done for the employer's benefit. Integrity Staffing petitioned for certiorari, which was granted by the Supreme Court.

During oral argument, counsel for Integrity Staffing argued that preliminary and postliminary activities need not be compensated unless they are integral and indispensable to the worker's principal activities. Counsel for Integrity Staffing characterized the security checks as "classic postliminary activities," likening them to the process of clocking in and out, or waiting in line to do so. Counsel posited that the length of time spent on such an activity is irrelevant to the determination of whether it is postliminary versus principal, and whether it is integral and indispensable. Counsel for the U.S. Department of Labor, as amicus curiae, supported the employer's position, asserting that the question of whether the activity is for the benefit of the employer is irrelevant in the context of Portal-to-Portal Act questions, as the Portal-to-Portal Act amended the FLSA in order to limit what would otherwise be compensable work. Counsel for the

employees took the position that the security checks were principal activities, so there was no need to determine whether they were integral and indispensable. The justices posed tough questions for each side, focusing on how to define the security checks, whether as “compensable work,” a “principal activity,” a “postliminary activity,” or “integral and indispensable,” and appeared to split along ideological lines.

The outcome of this case will obviously affect any employer who utilizes a post-shift (and, perhaps, pre-shift) security check, and thus should be monitored closely. A decision is expected by the end of June 2015.