

## Unpaid "Changing" Time During Meal Breaks? Check Your CBA.

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Practice Area: Labor and Employment

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In *Mitchell v. JCG Industries, Inc.*, the 7th Circuit held that time spent "donning and doffing" – changing into and out of – protective gear during an unpaid meal break is not compensable either under either the Fair Labor Standards Act ("FLSA") or Illinois Wage and Hour Law. Rather, compensation for time spent changing clothes during an unpaid break was properly left to the collective bargaining process.

The line workers in a poultry processing plant filed a FLSA and state wage and hour claim seeking compensation for time spent donning and doffing required protective gear, which otherwise was worn on top of their street clothes. The protective gear included a sterilized jacket, plastic apron, cut-resistant gloves, plastic sleeves, ear plugs, and a hair net. The employees received a "bona fide meal break", meaning an unpaid and duty-free meal break, after four hours of work. The employees were required to remove their protective gear and wash their hands once the meal break began and before returning to work. Time spent donning and doffing this gear was unpaid.

In finding that the changing time was not compensable under the FLSA or state law, the court relied on FLSA regulations allowing that any time spent changing clothes at the beginning or at the end of a work day could be excluded from "working time" if agreed to through collective bargaining. In response, the plaintiffs argued that the regulation solely addressed the beginning or end of each work day, and did not specifically include meal breaks. However, the court noted that the regulation at issue defined "work day" using the term "in general". Because of the qualifying phrase "in general", the court determined that employers and unions also could bargain over time spent changing at the beginning and end of meal breaks as well. The court also relied on the United States Supreme Court recent decision in *Sandifer v. U.S. Steel Corp.*, which found that employers and unions could bargain over the compensability of time spent changing clothes and washing. Finally, the court considered that the time spent changing was *de minimis*, meaning that it was too short to be concerned about for purposes of compensation. As a result, the 7th Circuit determined that the employees were not entitled to compensation for changing time during meal breaks because the employer had bargained over this topic with the union and agreed that such time was not compensable.

It is always a prudent first step to have time clock policies that are compliant with the FLSA and applicable state law. However, employers need to balance these policies with any relevant collective bargaining agreement and the practical considerations of clocking in and out at the beginning and the end of shifts and any unpaid breaks.

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