# Supreme Court Decision Clarifies Approach to Donning-and-Doffing Cases Under the FLSA

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On January 27, 2014, the U.S. Supreme Court held in *Sandifer v. United States Steel Corp*. that the Fair Labor Standards Act did not require an employer to pay workers for time spent donning and doffing protective gear. The Court confirmed that employers and workers can decide through collective bargaining that such time is not compensable. While the decision is focused on a specific exception applicable only to unionized workforces, it signals that the federal courts are to use a common-sense approach to donning-and-doffing cases.

*Sandifer* specifically involved Section 203(o) of the FLSA, which provides that a company and a union are free to negotiate as part of a collective bargaining agreement whether time spent by employees changing clothes at the beginning or end of each workday is compensable. In that case, U. S. Steel had bargained with the union that workers would not be paid for time spent donning and doffing protective gear. The plaintiffs brought a collective action under the FLSA, alleging that donning and doffing protective gear was not "changing clothes" under Section 203(o) and that they should be paid for the time.

In a unanimous decision, the Court ruled that time spent donning and doffing protective gear constituted "changing clothes" under Section 203(o). Relying upon the ordinary meaning of the word "clothes" at the time the statute was enacted, the Court explained that "clothes" referred to "items that are both designed and used to cover the body and are commonly regarded as articles of dress." The Court rejected the plaintiffs' contention that "changing" clothes did not apply to employees putting protective gear over their street clothes, ruling that time spent changing clothes includes time spent altering as well as substituting dress. The Court concluded that nine of the twelve items the plaintiffs were required to wear – a flame-retardant jacket, pair of pants, a hood, a hardhat, a snood, wristlets, work gloves, leggings, and boots – fell within the term "clothes" and that the company and the union could agree that time spent putting on these items was not compensable.

The Court held that the remaining three items the plaintiffs were required to wear – safety glasses, earplugs and a respirator – were not "clothes." Nevertheless, the Court found that time spent donning and doffing these items was still not compensable because it constituted a small part of the overall donning-and-doffing process and most of the time was spent putting on non-compensable clothes. The Court explained that the federal courts should not be spending their time trying to calculate how much time was spent on each piece of equipment and instead look at the entire process as a whole to determine whether the time is compensable.

*Sandifer* involved a provision of the FLSA applicable only to unionized workforces. In the non-union context, time spent putting on protective gear at the beginning and end of the work day is compensable. However the decision is significant in that it encourages the federal courts to take a pragmatic, common-sense approach to these issues by focusing on whether most of the time at issue is or is not compensable.

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