

## **When Does the Work Day End? It Depends**

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When it comes to wages, employees and employers are often at odds. Employees generally want to be compensated for all the time they are required to be at work. Employers, on the other hand, generally want to compensate employees only for the time they actually spend working and benefiting the company. In a rare unanimous decision, the United States Supreme Court recently commented on this divide.

The case is called Integrity Staffing Solutions, Inc. v. Busk. It involves hourly employees who worked at two warehouses in Nevada. Each day these employees retrieved, packaged, and shipped commercial goods for internet giant Amazon.com. To protect against theft, the employer, Integrity Staffing Solutions, required each employee to undergo a security screening at the end of the day. According to court documents, employees routinely spent 25 minutes each day passing through security. They were not compensated for this time. Eventually, two employees sued Integrity Staffing Solutions for alleged violations of the Fair Labor Standards Act (“FLSA”).

On appeal, the Supreme Court needed to decide whether the time spent going through security was compensable under the FLSA. This is not an easy task. On the one hand, Integrity Staffing Solutions required each employee to undergo daily security screenings. The screenings were mandatory; an employee could not work for Integrity Staffing Solutions without submitting to them. Over the course of a year, an average employee might spend over 100 hours going through security and would never receive compensation for that time. On the other hand, the security checks did not technically relate to the task at hand. Sure, they protected against theft, but were they integral to the task of retrieving, packing, and shipping consumer goods? Did they advance the company’s bottom line?

The Court ruled in favor of Integrity Staffing Solutions. Specifically, the Court found that the security screenings were not integral and indispensable to the employees’ principal activities (i.e. filling orders for Amazon.com). Accordingly, the time spent passing through security each day was deemed non-compensable under the FLSA.

Integrity Staffing Solutions raises the age-old question: what is work? Enacted in 1938, the FLSA established minimum wage and overtime compensation for each hour worked in excess of 40 hours per week. But ironically, Congress did not define “work.” Over the past several decades, the Supreme Court has toiled to define this term. In Integrity Staffing Solutions, the Court zeroed-in on Congress’ unspoken understanding.

Under current standards, an activity is considered work if it is integral and indispensable to an employee’s principal activity. This definition appears promising, but over the years, it has been met by limitations in practice. One might reasonably postulate that security screenings are integral and indispensable to fulfilling shipment orders for Amazon.com—after all, the screenings, at least in Integrity Staffing Solutions, were mandatory and prevented goods from being stolen. Yet, the Supreme Court found otherwise. The reason is that an activity is not

integral and indispensable merely because it is required. Rather, an activity is integral and indispensable if it cannot be removed without impairing an employee's ability to perform a principal activity.

For example, if employees working in a battery plant needed to wear protective clothing, the time spent donning that protective clothing would be integral and indispensable to their principal activities. Removing that protection would impair their ability to work safely. Conversely, if the security measures in Integrity Staffing Solutions were removed, the employees could still complete their assignments unimpaired. The difference between these examples is what effect the questioned activity has on an employee's principal activity.

Knowing when an activity is considered work is a delicate analysis. While the Supreme Court has helped clarify the issues involved, employers should consult with legal counsel before determining whether certain time is compensable or non-compensable under the FLSA and applicable state wage laws.