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Supreme Court Rules That Donning And Doffing Time May Not Be Compensable

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On Monday, the Supreme Court ruled in *Sandifer v. U.S. Steel*, unanimously holding that employees' time spent donning and doffing protective gear was not compensable under the Fair Labor Standards Act because that time had been excluded from compensation in a collective bargaining agreement. A class of current and former U.S. Steel employees filed suit under the FLSA for back pay for time spent donning and doffing protective gear that U.S. Steel required them to wear. U.S. Steel claimed the time was not compensable under the terms of the applicable collective bargaining agreement. The crux of the issue is how the Court would interpret 29 U.S.C. §203(o), the section of the FLSA that allows parties to collectively bargain over whether "time spent changing clothes … at the beginning and end of each workday" is compensable. Both "clothes" and "changing" require definition. The employees argued that "clothes" does not include protective gear, and therefore they could not have bargained away paid time to don or doff protective gear under §203(o). U.S. Steel argued for a broader interpretation of "clothes" to include anything worn for work. The Court defined the term somewhere in the middle, holding that "clothes" means items that are designed to cover the body and are commonly regarded as articles of dress. Regarding "changing," the employees again argued for a narrow interpretation, stating that changing meant only removing street clothes and replacing them with work clothes. The Court ruled that the definition was broader and could also encompass altering one's dress to put protective clothing on over street clothes. Based on these interpretations, the Court ruled that donning and doffing items such as protective jackets, pants, hard hats, gloves, and boots all fell under the umbrella of §203(o), and that time spent donning and doffing these items could be bargained away. Moreover, while items such as safety glasses, ear plugs, and respirators were not "clothes" and did not fall under §203(o), the time spent donning and doffing such items was de minimus and not compensable. The Court's ruling clarifies the meaning of §203(o) and is a signal to employers that they may bargain to exclude the donning and doffing of most protective gear from compensable time.

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