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Donning & Doffing: Old Is New Again

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Letter DOur Letter of the Law series is focused on current employment law developments, and donning and doffing wage disputes are anything but “new” to the courts. The U.S. Supreme Court and Congress were dealing with donning and doffing work clothing and equipment in the 1940s. (Perhaps that is obvious given that nobody really says “donning” or “doffing” in recent years other than in this context.) But donning and doffing, and when employees must be paid for getting dressed for work, continues as an important and tricky wage/hour law issue. That and the 7 th Circuit U.S. Court of Appeals’ “novel approach” to judicial curiosity in *Mitchell v. JCG Industries, Inc.* merits inclusion as this week’s letter D. The court in *Mitchell* recently weighed in on the proper compensation for workers who are required to don and doff safety protective gear at work. Union workers in a poultry processing plant brought the suit, alleging violations of state and federal wage laws for the employer’s failure to pay wages for time spent donning and doffing protective work gear. Workers were required to put on jackets, aprons, gloves, hairnets, and other items at the start of every shift. In addition, they had to remove and put back on the gear at the start and end of lunch breaks. The principal issue was whether the employer had to compensate workers for the time spent changing in and out of gear. Relying on Section 203(o) of the federal Fair Labor Standards Act, the court concluded that donning and doffing time is excluded from compensable time. In its opinion, the court noted that it took very little time to dress in the gear – and indeed noted that *the court staff* had done so. Additionally, the court noted that it would be overly burdensome to require employers to track such time for every employee. Donning and doffing remains a tricky issue, a perfect example of what lawyers call “fact specific” cases. Compare *DeKeyser v. Thyssenkrupp Waupaca, Inc.*, 735 F.3d 568 (7th Cir. 2013) (holding that summary judgment was improper to the employer in the case involving foundry employees who were required to shower and change after their shifts). Employers who require safety and other equipment or clothing must, decades after the law was first passed, continue to watch cases like *Mitchell* that might affect their decision making on what donning and doffing time must be paid.

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