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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Amazon Workers' High Court Case Could Reshape FLSA

By **Ben James**

Law360, New York (March 03, 2014, 8:51 PM ET) -- The Supreme Court's decision to tackle a putative collective action over time Amazon.com Inc. warehouse workers spent on post-shift security checks could lead to a landmark decision that upends widely held views on whether security screening time is compensable and provides needed clarity on what activities workers must be paid for under the Fair Labor Standards Act.

The high court agreed Monday to hear a challenge from a company that provides staffing for Amazon.com-owned warehouses to a Ninth Circuit decision that partially revived a wage-and-hour case brought by two ex-Amazon warehouse workers.

The Ninth Circuit panel's April decision reinstated an FLSA claim brought by workers Jesse Busk and Laurie Castro based on time spent going through security clearances meant to deter theft, which the plaintiffs said could require up to 25 minutes of waiting. But according to the staffing company, Integrity Staffing Solutions Inc., the decision created a split with the Second and Eleventh circuits on the compensability of security screening time.

Lawyers Law360 spoke with said the Ninth Circuit's ruling was at odds with employers' understandings of their obligations under the FLSA and echoed the warning in Integrity's petition that letting it stand could have massive financial consequences for some employers.

"The Ninth Circuit's ruling was a substantial departure from legal rules employers had long regarded as settled. If the Supreme Court affirms the Ninth Circuit's view, the result would involve many billions of dollars of unanticipated liability for employers, potentially costing jobs and making employers even more skittish about hiring workers," said Paul DeCamp, head of Jackson Lewis PC's wage and hour practice group and a former administrator of the U.S. Department of Labor's Wage and Hour Division.

According to Richard Alfred, head of Seyfarth Shaw LLP's wage and hour practice, the case is significant not just because of the potential exposure for companies that use security screenings, now common in a variety of industries, but because it will help pin down a term the FLSA doesn't define.

"In this case, the court is now taking on at least a part of what constitutes 'work,'" Alfred said.

In the Integrity case, the high court will likely give valuable guidance on the key "integral and indispensable" standard used by courts to determine what they will consider work, Alfred said. The Portal-To-Portal Act of 1947 amended the FLSA to make it clear that "preliminary" and "postliminary" activities aren't covered, but within a decade, the Supreme Court had ruled that pre- and postliminary activities were covered if they were "integral and indispensable" to a worker's main activities.

"At the heart of the issue before the court ... is the idea of what activities are 'integral and indispensable' to principal job duties," Alfred said. "Employers and plaintiffs' lawyers will have a great deal more info about what 'integral and indispensable' means [after the ruling]."

And even if the high court hands down a narrow decision that focuses on the circumstances underpinning the Busk plaintiffs' claims, it will be tough to rule in a way that doesn't illuminate the broader question of what pre- and postliminary activities are compensable, according to Alfred.

"The Supreme Court's decision will answer the question regarding pre- and post-shift security screenings, and the reasoning the court applies will be applicable to, and shed light on, other pre- and post-shift activities and whether these are also compensable," he said.

Paul Hastings LLP's Marc Bernstein predicted that the Supreme Court would reverse the Ninth Circuit and called the distinction the panel drew between the Integrity case and the security check decisions out of the Second and Eleventh circuits unpersuasive.

DeCamp said the Ninth Circuit's panel opinion reflected a view of the FLSA that predated the Portal-To-Portal Act: basically, that workers had to be paid for any time spent doing a task that benefited the employer.

"The problem with the Ninth Circuit opinion is that it read the notion of 'integral and indispensable' out of the law," DeCamp said.

While Wigdor LLP's Douglas Wigdor, who represents employees, wouldn't predict how the high court might rule, he said that employees required to wait to pass through security before going home after work ought to be paid.

"If a company requires its employees to spend time waiting to clear security screening before going home, which is obviously for the benefit of the employer, they should be compensated for that time under the FLSA," Wigdor said.

But regardless of where they came down on who ought to prevail on the security screening time issue, most lawyers said they were anticipating a Supreme Court decision that has broad implications and offers significant guidance on the FLSA.

"It is likely that this will be an important ruling clarifying the boundaries between compensable and noncompensable time," Bernstein said.

--Editing by Kat Laskowski and Philip Shea.
