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FLORIDA
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PROTECTED ACTIVITY

Union organizing through company e-mail? Insight from NLRB and PERC

by Robert J. Sniffen and Jeff Slanker
Sniffen & Spellman, P.A.

The National Labor Relations Board (NLRB) recently released its decision in Purple Communications, Inc., overturning NLRB precedent addressing whether employee use of company e-mail systems is permissible under the National Labor Relations Act (NLRA). The NLRB previously held that employers could prohibit employees from using company e-mail systems to engage in organizing activities, but its decision in Purple Communications reverses that precedent.

The decision marks a shift in private-sector labor relations law. Although it could still be appealed, Florida employers should review and assess any workplace policies regarding employees' e-mail use as well as how you implement those policies to make sure you're in compliance with the NLRB's pronouncement of the law in Purple Communications.

Case before the NLRB

Purple Communications, a company with several locations, provides sign language interpretation services. The Communications Workers of America (CWA) sought to unionize Purple Communications' workers and later filed an unfair labor practice charge with the NLRB alleging the company's policy prohibiting employees from using its e-mail system to discuss union activities violated the NLRA.

Purple Communications' e-mail communications policy stated that company-provided technology, including e-mail, could be used only for company business. The policy also expressly prohibited employees from using technology provided by Purple Communications, including the e-mail system, for a host of reasons, including engaging in activities on behalf of an organization or person with no professional or business affiliation with the company as well as sending unsolicited personal e-mails.

Because the company's technology policy could ostensibly encompass union activity and union solicitation, the CWA alleged in its unfair labor practice charge that the policy violated Section 7 of the NLRA, which prohibits employers from interfering with employees' protected concerted activity or discussion of the terms and conditions of their employment.

NLRB's decision

Departing from its own precedent, the NLRB found that Purple Communications' policy violated Section 7 of the NLRA and that employees are allowed to use company e-mail systems during nonworking time for union-organizing purposes. Section 7 grants employees the "right to . . . engage in . . . concerted activities for the purpose of collective bargaining or other mutual aid or

AGENCY ACTION

EEOC reports 2014 progress. The Equal Employment Opportunity Commission (EEOC) has issued its performance report for fiscal year (FY) 2014, showing that the agency secured $296.1 million in monetary relief for victims of employment discrimination in private-sector and state and local government workplaces through mediation, conciliation, and other administrative enforcement. The EEOC also secured $22.5 million in monetary relief for charging parties through litigation and $74 million in monetary relief for federal employees and applicants. The agency received 88,778 private-sector charges in FY 2014, a decrease of about 5,000 charges from 2013. In addition, a total of 87,442 charges were resolved. That's 9,810 fewer than in FY 2013. The agency attributed the decrease to the government shutdown and the effects of sequestration.

OSHA launches dialogue on exposure to hazardous chemicals. The Occupational Safety and Health Administration (OSHA) has launched what it calls a national dialogue with stakeholders on ways to prevent work-related illnesses caused by exposure to hazardous substances. The first stage of the process is a request for information on the management of hazardous chemical exposures in the workplace and strategies for updating permissible exposure limits (PELs). Ninety-five percent of OSHA's current PELs, which cover fewer than 500 chemicals, have not been updated since their adoption in 1971, the agency said.

PBGC reports on 2014 deficits. The Pension Benefit Guaranty Corporation (PBGC) has released its annual report, which shows that the agency's deficit increased to about $62 billion in FY 2014, largely because of the declining condition of a few multiemployer plans. The financial condition of the single-employer program improved with a deficit of about $19.3 billion, down from $27.4 billion in the previous year. The increase in the PBGC's deficit is consistent with 2013 projections, which found that the insolvencies of a minority of multiemployer plans have become both more likely and more imminent. The multiemployer insurance program's deficit rose to $42.4 billion, compared with $8.3 billion during the previous year. The program's increased deficit is largely due to the fact that several additional large multiemployer plans are expected to become insolvent within the next decade. The multiemployer program insures the benefits of more than 10 million workers and retirees in about 1,400 plans. When multiemployer plans fail, the PBGC provides financial assistance so the plans can pay benefits at no more than the PBGC's statutory multiemployer benefit guarantee level. ✤

protection." That means employees can discuss the terms and conditions of employment for the purpose of collective bargaining (e.g., forming a union), but there are some restrictions on that protection.

One such restriction addresses when it's appropriate to engage in union solicitation during working hours and on work property. Union solicitation merely means seeking the support of employees to unionize. Employees themselves, but not outside union organizers who aren't employees, may solicit coworkers anywhere on the employer's property as long as the solicitation doesn't occur during working time.

The NLRB previously resolved whether employers may prohibit employees from using company e-mail to engage in union discussions in a 2007 case, *Register Guard.* In that case, the Board held that an employer could lawfully prohibit employees from using its e-mail system to engage in non-work-related activity, including Section 7 protected concerted activity. The NLRB specifically noted the interests of an employer in its own property and technology systems, including e-mail. Nevertheless, the Board expressly overruled the *Register Guard* decision in *Purple Communications,* stating that its previous decision was incorrect.

The NLRB found that its decision in *Register Guard* overemphasized employer property rights and undervalued employees' Section 7 rights. Consequently, the Board found that employees cannot be prohibited from using company e-mail to discuss the terms and conditions of their employment for the purposes of collective bargaining or union organizing.

The NLRB did limits its decision, if only nominally. According to the Board, an employer could prohibit employee use of the company e-mail system for non-work-related purposes, including activity protected under the NLRA, if it could show special circumstances justifying the restrictions, such as the need "to maintain production or discipline." The NLRB noted that such an assertion would require the employer to articulate the interest at issue and demonstrate how that interest supports the restrictions it has implemented.

The NLRB didn't provide guidance on the type of interests that might support a prohibition or when such a prohibition would be valid. For such a prohibition to be upheld, an employer likely will have to provide specific evidence or other demonstrable support to establish that non-work-related e-mail use interferes with its operations. *Purple Communications, Inc.,* Cases 21-CA-095151, 21-RC-091531, and 21-RC-091584.

PERC's position

The NLRB's jurisdiction, which essentially involves interpreting and applying the NLRA, covers a majority of private employers throughout the country. However, its decisions aren't applicable to state and local governmental employers in Florida. Public employers in the state are covered by the Florida Public Employees Relations Act (PERA), which is set forth in Chapter 447 of the Florida Statutes. The Florida Public Employees Relations Commission (PERC) adjudicates disputes arising under the PERA.

There have been at least two cases in which PERC addressed whether a Florida public employer could prohibit its employees from using workplace e-mail systems to engage in union-organizing activity or collective-bargaining-related communications during nonworking time. In *Gator Lodge 67, Inc., Fraternal Order of Police and Sergeant Donald Van Wie v. Sheriff of Alachua County* and *United Faculty of Florida v. Florida Bd. of Educ.,* the commission examined whether employees' use of the employer's e-mail system for union activities during nonworking time violated Section 447.501(1) of the Florida Statutes, which prohibits public employers from interfering with the formation, existence, or administration of a union. In both cases, PERC held that a public employer may violate Section 447.501(1)(a) by implementing overly broad restrictions against sending union messages via its e-mail system.

Bottom line

While the decision in *Purple Communications* may still be appealed, employers should take note of the NLRB's about-face on employees' use of company e-mail

ASK ANDY

The retroactive FMLA designation dilemma

by Andy Rodman
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Q *An employee has missed the last three weeks of work because of a medical issue, and we just realized that we never provided him with his Family and Medical Leave Act (FMLA) packet. Is it too late to designate his absence as FMLA leave?*

A As with many legal issues, it depends. The FMLA regulations clearly place the burden on an employer to notify an employee of his FMLA eligibility and rights within five business days after the employee requests leave or after the employer becomes aware that the leave may be needed for an FMLA-qualifying reason. Then, within five business days after receiving enough information to determine whether the leave is being taken for an FMLA-qualifying reason, the employer must notify the employee whether the leave will be designated and counted as FMLA leave. Unfortunately, things don't always go according to plan.

Fortunately, however, the FMLA regulations provide some limited recourse for employers that neglect to send out timely FMLA notices. Under the regulations, if an employer doesn't timely designate FMLA leave, it may retroactively designate the employee's time off as FMLA leave under two circumstances:

- **Mutual agreement.** Time off that otherwise qualifies as FMLA leave may be retroactively designated as FMLA leave if the employer and the employee "mutually agree" to the retroactive designation.
- **No harm.** Time off that otherwise qualifies as FMLA leave may be retroactively designated as FMLA leave if the employer's failure to timely designate the leave "does not cause harm or injury" to the employee.

As an example of the "no harm" provision, the regulations say that if an employee with a serious health condition wouldn't have been able to return to work during the time period at issue, then he may not be able to show that he suffered harm because of the employer's failure to timely designate the leave as FMLA leave. Conversely, if the employee took time off to care for his child with a serious health condition believing the time off wouldn't count toward his FMLA entitlement and planned to use his FMLA leave at a later date for another FMLA-qualifying reason, then he may be able to show that the employer's failure to designate the leave as FMLA leave caused him harm.

If retroactive designation isn't permitted under the regulations in your situation, you may not be able to count the employee's leave against his remaining FMLA allotment. Compliance with the FMLA's notice and designation obligations can be complicated, so consult with your labor counsel if you have any questions. Failure to comply with the notice and designation requirements may expose you to a claim for interference with, restraint of, or denial of the employee's exercise of his FMLA rights.

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Your identity will not be disclosed in any response. This column isn't intended to provide legal advice. Answers to personnel-related inquiries are highly fact-dependent and often vary state by state, so you should consult with employment law counsel before making personnel decisions. ✤

WORKPLACE TRENDS

Analysis shows hot jobs for 2015. CareerBuilder and Economic Modeling Specialists Intl. have conducted an analysis to determine a list of hot jobs for 2015 based on supply and demand. The list features occupations for which the number of jobs companies post each month significantly outpaces the number of people they're actually able to hire. Among occupations that require a college education and have the largest gap between job openings and hires are marketing executives, application software developers, registered nurses, and industrial engineers. Among occupations that don't require a college degree but have gaps between job openings and hires are heavy and tractor-trailer truck drivers, merchandise displayers and window trimmers, orderlies, and wholesale and manufacturing sales representatives.

Research shows recession's effect on retirement. Research from the Employee Benefit Research Institute (EBRI) shows how the recession of 2008 and 2009 affected the retirement expectations of many Americans. The report finds a nearly 23% drop in workers retiring early or close to their expected retirement age after the markets crashed. Specifically, EBRI found that before September 2008, the start of the recession, 72.4% of workers retired either before or shortly after (no more than one year) their expected retirement age. That figure dropped to 49.6% after September 2008.

Study finds part-timers struggling to find full-time jobs. A new study from CareerBuilder shows that 32% of part-time workers say they want to work full-time but haven't been able to land a full-time job. Of those, 31% say they are the sole breadwinner in their household, and 39% say they struggle to make ends meet financially. One in four part-time workers who want full-time jobs said they currently work two or more jobs. The nationwide survey was conducted online by Harris Poll on behalf of CareerBuilder from August 11 to September 5 and included a representative sample of 301 part-time workers across industries and company sizes.

Managers putting out fewer fires than 10 years ago, survey finds. A survey of executives shows that they are dealing with fewer crises than they did 10 years ago. In a recent survey from Accountemps, 49% of chief financial officers (CFOs) interviewed said they contend with at least one unexpected crisis a week. That compares to 80% of executives who said they dealt with at least one unforeseen crisis a week in a similar survey conducted 10 years ago. CFOs were asked, "How often, on average, do you find yourself responding to unexpected crises at work?" In 2014, 8% said a few times a day, while 19% said the same in 2004. In 2014, 4% answered once a day, down from 16% in 2004. ✤

systems to engage in union organizing. Carefully scrutinize your policies on employee e-mail use to determine if they are consistent with the NLRB's holding. Even nonunion employers that don't ensure their policies are consistent with the Board's new precedent may face unfair labor practice charges, just like Purple Communications did.

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DISABILITY DISCRIMINATION

Court rules ADA doesn't protect employee who committed misconduct

by Lisa Berg
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According to the U.S. 11th Circuit Court of Appeals (whose rulings apply to all Florida employers), the Americans with Disabilities Act (ADA) does not protect an employee with bipolar disorder from being terminated for taking a company computer containing confidential information during a manic episode.

Background

Ryan H. Foley was a financial adviser with Morgan Stanley. The company had several written policies addressing the protection and treatment of its confidential and proprietary information, and it expressly prohibited the removal of confidential information from its premises. Believing the company was spying on him, Foley removed the central processing unit (including the hard drive) from his office computer without authorization and took it to the home of a friend, who wasn't a Morgan Stanley employee.

During an investigation, the company reviewed its security camera footage, which showed Foley leaving the workplace with the computer equipment. Initially, he lied about taking the computer, but after several days, he retrieved it from his friend's home and returned it to the office. He was fired the same day.

Foley sued Morgan Stanley for disability discrimination. In defending his behavior, he alleged that he took the computer while he was "in the midst of a psychotic episode," which was a manifestation of his bipolar disorder. He also alleged that because his misconduct was caused by a disability, firing him for that conduct was disability discrimination.

The district court disagreed and dismissed the case, finding Foley wasn't a qualified individual with a disability because he couldn't show that Morgan Stanley had "actual or constructive knowledge" of his disability. The court found there was no evidence that he ever told the company that he is bipolar or asked for an accommodation.

The district court also found that Morgan Stanley's security policy is an integral part of its business, and adherence to the policy is an essential requirement of a financial adviser's job. The court held that even if he has a disability, Foley wasn't qualified to perform the essential functions of his job because one of those functions is to protect the employer's confidential information. Foley appealed to the 11th Circuit, which affirmed the district court's ruling.

11th Circuit's decision

More specifically, the 11th Circuit held that Foley was incapable of following the company's strict security policy, which "rendered him otherwise unqualified" to carry out the essential duties of his job. The appeals court also noted that he never requested an accommodation related to his alleged bipolar disorder at any time before he took the computer, and that failure was fatal to his claim. Finally, the 11th Circuit concluded that even if Foley is a qualified individual with a disability under the ADA, his claim would still fail because he couldn't show Morgan Stanley terminated him because of his disability.

Foley appealed the 11th Circuit's ruling to the U.S. Supreme Court. He argued that the appellate court incorrectly determined that an employee's conduct resulting from a disability can be treated as independent grounds for firing him rather than as part of the disability itself. On November 3, 2014, the Supreme Court declined to consider the appeal, leaving in place the 11th Circuit's ruling in Morgan Stanley's favor.

Employer takeaway

Employers should proceed cautiously before terminating an employee for misconduct caused by a mental disability. This case might have been decided differently if Morgan Stanley had known about Foley's disability or if he had previously requested an accommodation.

Employers outside the 11th Circuit should consult with legal counsel when terminating employees under similar circumstances. Other federal appeals courts have opined that conduct stemming from a disability is considered part of the disability, not a separate basis for termination.

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SAME-SEX MARRIAGE

Legal knots untied: Same-sex marriage now lawful in Florida

by Robert J. Sniffen and Jeff Slanker
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Effective January 6, 2015, same-sex marriage became lawful in Florida. On December 19, 2014, the U.S. Supreme Court declined to postpone implementation of the relief provided for in U.S. District Court Judge Robert Hinkle's holding that Florida's ban on same-sex marriage is unconstitutional. Judge Hinkle stayed (delayed) implementation of most of the relief provided for in his order until January 5, 2015, so the state of Florida could appeal the decision. Florida's attorney general, Pam Bondi, requested that the Supreme Court and the 11th Circuit extend the date of the stay, but both courts declined to do so. Although an appeal is still pending before the 11th Circuit, Florida has become the 36th state to legally recognize same-sex marriage.

Bondi issued the following statement in response to the Supreme Court's one-paragraph order declining to extend the stay: "Tonight, the [U.S.] Supreme Court denied the state's request for a stay in the case before the 11th Circuit. . . . Regardless of the ruling, it has always been our goal to have uniformity throughout Florida until the final resolution of the numerous challenges to the voter-approved constitutional amendment on marriage. Nonetheless, the Supreme Court has now spoken, and the stay will end on January 5."

Most federal judges and appeals courts have ruled against states' same-sex marriage bans, and same-sex marriages are occurring in about three dozen states. Like many other judges and appellate courts, Judge Hinkle ruled that Florida's gay marriage ban violates the U.S. Constitution's guarantee of equal protection.

Bondi sought to keep the stay in place at least until the Supreme Court decided whether to hear potential appeals stemming from a decision upholding bans on same-sex marriage issued by the 6th Circuit, which has jurisdiction over appeals from federal district courts in several Midwestern states. The 6th Circuit recently became the first intermediate federal appellate court to uphold a same-sex marriage ban as constitutional, which creates a conflict with other federal appellate courts that may result in the Supreme Court resolving the issue.

The Supreme Court's decision not to review the Florida ban doesn't resolve the larger legal battles still brewing over same-sex marriage here. Oral arguments before the 11th Circuit in the state's appeal of Judge Hinkle's decision are likely to commence in early 2015. In any event, with the expiration of the stay, Florida now recognizes same-sex marriage. Now is the time to revisit your policies and make decisions about their appropriateness in light of the status of same-sex marriage in Florida. Start by reviewing "What employers need to know about same-sex marriage in Florida" on pg. 1 of our November 2014 issue. ✤

HEALTHCARE REFORM

ACA update: three concerns for employers

The enactment of the Affordable Care Act (ACA) in 2010 began an extended period during which far-reaching changes to the American healthcare system will take effect, including changes to employer-provided health insurance. The law has required and will continue to require employers to make changes to their plans and important strategic decisions along the way. So what are some of the things employers should be most concerned about now?

Concern #1: ACA play-or-pay provision

In 2015 and 2016, the provision many employers are most worried about—the employer shared responsibility provision (often referred to as the "play or pay" provision)—goes into effect. Under the play-or-pay provision, employers face penalties:

- If they don't offer health insurance coverage; or
- If the coverage they offer is insufficient.

The ACA play-or-pay provision was originally supposed to take effect January 1, 2014, but there have been delays. Now, under the final regulations addressing the provision, applicable large employers with *100 or more employees* will still have to contend with possible penalties under the play-or-pay provision in 2015. However, applicable large employers with *50 to 99 employees* won't face any potential penalties under the provision until 2016 if they meet certain requirements and provide appropriate certification.

Concern #2: Employer and insurer reporting requirements

When it comes to the ACA, the play-or-pay provision has received a lot of attention from employers. However, to help the IRS collect data and enforce the provision, the ACA amended the Internal Revenue Code to provide for related reporting requirements. Section 6056 concerns information reporting by applicable large employers on health insurance coverage offered under employer-sponsored plans, while Section 6055 deals with information-reporting requirements for *providers* of minimum essential health insurance coverage (including self-insured employers that provide "minimum essential coverage" to individuals).

Recently, the IRS released draft forms and instructions previewing the information employers will need to provide to comply with their reporting requirements. It's important to remember, though, that these are just drafts, so the forms and the provisions could change between now and when filing is actually required. However, you can use the drafts to begin taking steps to ensure compliance with the requirements.

So when will you have to comply with these reporting requirements? Information reporting under Sections 6056 and 6055 is *voluntary* for calendar year 2014. Reporting is first required in early 2016 with respect to calendar year 2015.

In other words, these reporting requirements are first effective for coverage offered (or not offered) in 2015. Applicable employers must file information returns with the IRS and furnish statements to employees beginning in 2016 to report information about their offers of health insurance coverage to their full-time employees for calendar year 2015.

You should review these final regulations and draft forms and make sure you're planning for the reporting requirements.

Concern #3: ACA in the courts

Since the ACA became law in 2010, there have been a variety of judicial challenges to it, and it appears that the court system isn't finished with the law yet. Federal appeals courts have recently issued conflicting rulings regarding ACA exchange subsidies. So what is the dispute about?

Section 36B of the Internal Revenue Code (enacted as part of the ACA) makes tax credits available as a form of subsidy to individuals who purchase health insurance through exchanges. On its face, the provision authorizes such credits for insurance purchased on an exchange established by one of the 50 states or the District of Columbia. However, the IRS has interpreted the provision to also authorize the subsidy for insurance purchased on exchanges established by the federal government. (These are generally known as federal exchanges or federally facilitated exchanges.)

Federal courts have disagreed on whether the IRS can do that or whether the ACA unambiguously restricts the subsidies to insurance purchased on state-based exchanges. However, the issue should be cleared up in 2015 since the U.S. Supreme Court recently decided to jump into the fray and hear the issue.

So why is this issue important? Although the tax credits are still available right now, if a ruling that the subsidies are available only for state-based exchanges is upheld, it could cause a lot of damage to the ACA. That's because the law's provisions are so interconnected and the subsidies come into play in many of the law's mandates, including the individual mandate and the play-or-pay provision.

The big question for employers if such a ruling happens would be whether employers in states with federally facilitated exchanges (which is a lot of them) would be liable for penalties if an employee receives a subsidy. While you should be watching the cases closely, you should continue with your employer mandate plans until the Supreme Court rules definitively on the issue.

What should employers be doing?

So what actions should you be taking regarding the ACA? You should evaluate your benefits plans to:

- Ensure they are in compliance with the ACA provisions that are already in effect;
- Determine whether they will be in compliance with ACA provisions that will be going into effect in the future; and
- Prepare a plan to implement any necessary changes.

Additionally, as discussed earlier, you also need to be preparing for the play-or-pay provision effective in 2015 and 2016. Hopefully you have already started this preparation!

Finally, you need to monitor developments on the ACA, including:

- New regulations and guidance from various agencies; and
- Court decisions (including the upcoming Supreme Court decision on exchange subsidies). ✤

WAGE AND HOUR LAW

Supreme Court holds postwork security screenings not compensable

Consider this scenario: Your company requires temp employees to go through a security check after they clock out at the end of their shifts. It takes 15 to 30 minutes because they must remove their shoes, empty their pockets, and go through a metal detector. The employees have started complaining about the time and are asking to be paid. What do you do?

The U.S. Supreme Court just handed down a unanimous decision ruling that the Fair Labor Standards Act (FLSA) doesn't require employers to compensate workers for time spent in postshift security screenings. The ruling is a victory for employers and clarifies a confusing rule of federal wage and hour law.

What's considered compensable time?

Under the FLSA, you aren't required to compensate employees for time spent performing tasks that are "preliminary" or "postliminary" to the principal work activity to be performed. That means you aren't required to compensate workers for time spent commuting to work or walking to a time clock to punch in.

You do, of course, have to compensate employees for the "principal activities." These activities include the main job functions—for example, fulfilling orders in a product warehouse—as well as any tasks that are "integral and indispensable" to the job to be performed.

But what is an "integral and indispensable" task? That question has arisen a lot in recent years—particularly with regard to donning and doffing protective gear. And as you might imagine, a lot of confusion has come about as different courts and different employers have used their own interpretations to decide which tasks are and aren't "integral and indispensable."

Are security screenings integral and indispensable?

In the case before the Supreme Court, two warehouse workers employed by Amazon filed a class action lawsuit seeking compensation for the time they spent awaiting and undergoing a security screening and search before leaving work. The screenings weren't among the main job functions they were hired to perform, so the question became whether the screenings were an integral and indispensable task—in other words, whether they were *part of* the employees' overall principal activities or merely "postliminary" work that didn't have to be paid.

To answer that question, the 9th Circuit used a two-part test that focused on whether the screenings were *necessary* to the principal work performed and whether they were done for the benefit *of the employer.*

Unfortunately, the definition of "integral and indispensable" work is extremely broad. Theoretically, any work-related activity could be argued to benefit the employer, so it was unclear at what point an activity became beneficial enough that the employer must pay for it.

High court says screenings not compensable

The 9th Circuit ruled in favor of the Amazon employees because it determined that the security screenings were a job requirement and were for the benefit of the employer (to deter theft). The Supreme Court disagreed.

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In the opinion, written by Justice Clarence Thomas, the Court held that the 9th Circuit's focus on whether the particular activity was "required by" or "for the benefit of" the employer was an oversimplification. In fact, he wrote, that test would require employers to pay employees for the very activities federal law had specifically excluded from compensation, e.g., walking to a workstation.

Instead, the Court noted that employers should focus on whether the activity in question is an *intrinsic element* of the principal activities the worker has been hired to perform and is one with which he *cannot dispense* if he is to perform the job. An activity that passes both of those tests will be an "integral and indispensable" activity for which the employee must be compensated.

So for the Amazon workers, the principal activity for which they were hired was performing warehouse work—packaging products for distribution to customers. Going through security screenings or performing work in any other way related to the screenings was *not* the principal activity. So the analysis then had to focus on whether the screenings are "integral and indispensable" to warehouse work.

Justice Thomas pointed out that the security screenings could have been completely eliminated without affecting the workers' ability to perform the warehouse work. Therefore, the screenings couldn't have been integral and indispensable to those duties. *Integrity Staffing Solutions, Inc. v. Busk.*

Bottom line

While this decision is excellent news for employers, if workers are complaining about the time spent in security checks, those complaints may still give rise to unwanted morale issues. Therefore, you may wish to consider steps you can take to expedite or reduce the unpaid time they spend in the screenings. For example, you may ask or allow employees to complete some parts of the security check preparation (e.g., ensuring there are no items in their pockets and removing shoes and jackets) before clocking out to help the process proceed more efficiently.

Another option might be to randomize the security checks so it isn't necessary for every employee to undergo the screening every day. The possibility of being randomly screened would still deter theft, but the screenings would be far less time-consuming and onerous for the employees (and would result in fewer complaints to harried payroll and HR professionals). ✤

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