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Supreme Court Weighs in on Donning/Doffing Dispute

The Fair Labor Standards Act, 29 U.S.C. §201, *et seq.* ("the FLSA"), governs the payment of overtime compensation to most American workers. Since the statute's enactment in 1938, labor and management have repeatedly sparred over what constitutes "hours worked" for purposes of determining if overtime compensation is due.

The recent rash of FLSA class action litigation has included an interesting and contentious subset of claims related to this issue of hours worked – so called donning/doffing litigation. Donning/doffing claims are typically brought by employees seeking to include, in the calculation of their hours worked, time spent putting on and taking off specific items of clothing required for certain occupations.

The United Stated Supreme Court, in its recent decision in Sandifer v. United States Steel Corp., No, 12-417 (January 27, 2014) recently weighed in on the donning/doffing dispute in the context of a unionized workplace. The class of plaintiffs in Sandifer alleged that the time they spent putting on twelve (12) different items of protective gear required to work in a steelmaking facility should be included in the calculation of their hours worked. In rejecting this claim, the Court focused on 29 U.S.C. §203(o), which provides, in relevant part, as follows:

> *Hours Worked – in determining for the purposes of this title the hours for which an employee is employed, there shall be excluded any time spent in changing clothes or washing at the beginning or end of each workday which was excluded from measured working time during the week involved by the express terms of or by custom or practice under a bona fide collective-bargaining agreement applicable to the particular employee.*

According to the Court, the fact that the plaintiffs and United States Steel were parties to a collective bargaining agreement that specifically defined donning/doffing time as not being compensable was fatal to the plaintiffs' claims.

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The Sandifer decision is significant for unionized employers in that it reinforces an important line of defense to donning/doffing claims under the FLSA, namely a clearly written exclusion in a valid collective bargaining agreement. Unionized employers are well advised to review, and if necessary address this issue at the negotiating table.

For non-unionized employers, the most significant take-away from the Sandifer decision is the Court's finding that absent the application of 29 U.S.C. §203(o), the donning/doffing at issue in that case would have been considered compensable under the FLSA. Notably, the Court also rejected the notion that donning/doffing time can be disregarded if it is '*de minimis*.' Taken together, these two findings increase the likelihood that in a non-union setting, time spent by employees putting on and taking off specific items of clothing required by their employers will be considered compensable for purposes of applying the FLSA.

For additional information regarding this, or any other labor or employment law matter, please contact the attorneys in the Portsmouth, New Hampshire office of Jackson Lewis PC.

Jackson Lewis P.C., one of the country's largest and fastest-growing workplace law firms, is pleased to announce that **Debra Weiss Ford**, **Daniel P. Schwarz**, and **Martha Van Oot** are three of 105 attorneys from the firm selected for inclusion in the

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Jackson Lewis is pleased to share a radio interview with Debra Weiss Ford, Office Managing Shareholder of the Portsmouth Office, and Dave Ciullo, host of "HR Power Hour Radio with Dave Ciullo."

In this weekly hour segment that provides valuable insight into successful Human Resource Management, Dave Ciullo interviews key professionals on a variety of timely topics affecting decision-makers; Debra Weiss Ford discusses the "Jerk at Work." The interview aired on January 11, 2014 on *News Talk WLOB 1310 AM* in Portland, Maine from 10:00 – 11:00 a.m. The audio is available on the website, **hrpowerhour.com**.