

SHOULD CHANGING INTO WORK CLOTHES AND WALKING TO WORKSITE BE PAID?



Current and former hourly employees at U.S. Steel's facility in Gary, IN – 800 of them – brought a collective action against their employers. They argued that the company had violated the Fair Labor Standards Act (FLSA) by not compensating them for the time it took to change into their work clothes and walk from the locker rooms to their work stations and back again. None of the collective bargaining agreements between U.S. Steel and the workers' union required that employees be compensated for the time changing clothes or traveling. But the workers were alleging that the FLSA had such a requirement. The district court disagreed but apparently on only one point – changing clothes was not compensable under the FLSA but the time spent walking might be. U.S. Steel filed an interlocutory appeal – or an interim appeal, one that can be filed before a final decision has been made. The workers, in turn, appealed the dismissal of their other claim. U.S. Steel argued that the employees' appeal was improper, as they had not requested a leave to appeal. Appellate judges concurred and dismissed their appeal, but first looked at the district judge's dismissal of the clothes-changing claim, acknowledging that if it were indeed erroneous, the workers would still be able to argue in favor of compensation for the travel time. In addition to hard hats and safety glasses, workers changed into flame-retardant pants and jackets, work gloves and work boots. The plaintiffs asserted that these "clothes" are a necessity and should be deemed safety equipment. The appeals court noted that the FLSA does not define clothes and has no real specification on the topic of compensating workers for the time changing into work clothes. Therefore, the company should abide by the collective bargaining agreement, which has no such stipulation.



Appellate judges expressed the opinion that the district judge's decision to rule that the clothes-changing time was not work time – and not compensable – but refuse to make a similar ruling on the time walking to work stations was "puzzling and paradoxical." A decision in another case stated that, if changing into work clothes was paid and therefore a "principal activity," then the time walking from the locker room to a worksite is not a principal activity itself but rather time walking between principal activities. If collective bargaining agreements specify that changing into clothes is not work time, and that the workday doesn't start until employees reach their stations, then, the appeals court believed, the time traveling to worksites should not be compensated. Appellate judges further noted that, if workers were paid for these activities, employers would be paying the same for less time worked and would likely make costly efforts to cut the travel time – thereby potentially lowering the hourly wage. U.S. Steel's interlocutory appeal was validated, and the appeals court recommended that the district court dismiss the lawsuit.