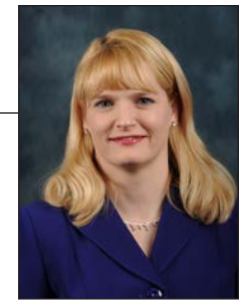
by Caroline Levine Johnson



Integral and Indispensable Principal Activities

State and federal laws often overlap in litigation, resulting in litigated claims proceeding in a simultaneously parallel manner in state and federal courts, or the claims may be resolved together in the federal action. Frequently, the federal court must determine whether federal law preempts state law or if dismissal of the state or federal action is required. The requirement for preemption or dismissal often facilitates the ultimate issues to be determined by the federal court. A recent U.S. Supreme Court ruling in *Integrity Staffing Solutions Inc. v. Busk*, 574 U.S. ——, 135 S.Ct. 513 (2014), illustrates the interplay between federal and state statutes in employment litigation. More significantly, the Supreme Court addressed whether the Fair Labor Standards Act (FLSA) provides additional compensation for employees when an employer requires additional tasks to be performed by the employee after the employee's work day has concluded.

Integrity Staffing Solutions Inc. (Integrity) contracted with Amazon to provide employees for warehouse staffing in several states. Integrity employees "retrieved products from the [warehouse] shelves and packaged those products for delivery to Amazon customers."[1] As Integrity employees completed their shift, Integrity loss-prevention policies required the "employees to undergo a security screening before leaving the warehouse at the end of each day. During the screening, employees removed items such as wallets, keys, and belts from their persons and passed through metal detectors."[2] Importantly, this screening process was performed after the employees had terminated their shift and resulted in delaying Integrity employees from exiting the warehouse for at least 25 minutes.

"Jesse Busk and Laurie Castro worked as hourly employees of Integrity Staffing at [Amazon] warehouses in Las Vegas and Fenley, Nevada, respectively," and they objected to Integrity's failure to pay its employees for the additional 25 minutes spent engaging in post-shift screening procedures.[3] An additional claim regarding Integrity's failure to properly compensate the plaintiffs asserted that Integrity required its employees "to walk long distances to clock out and clock back in, which allegedly diminished their meal period by as much as 10 minutes," or one-third of their 30-minute lunch break.[4] The employees argued that the theft-prevention screening procedures were accomplished only for the benefit of their employers and that the screening time "could have been reduced to a de minimis amount by adding more security screeners or by staggering the termination of shifts so that employees could flow through the checkpoint more quickly."[5] Busk and Castro joined a putative "class action against Integrity, to recover unpaid wages and overtime, liquidated damages, and attorneys' fees and costs under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §§ 201-216, and Nevada labor law, NRS §§ 608.018, 608.019, and 608.030."[6]

"The fact that an employer could conceivably reduce the time spent by employees on any preliminary or postliminary activity does not change the nature of the activity or its relationship to the principal activities that an employee is employed to perform."

—Justice Thomas, *Integrity Staffing Solutions Inc. v. Busk*, 574 U.S. ——, 135 S. Ct. 513, 519 (2014).

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The U.S. District Court for the District of Nevada dismissed the employee's state class claims because "state law class claims which are predicated on the same acts and circumstances as a simultaneously asserted FLSA claim collective action must be dismissed due to the conflicting 'opting' mechanisms."[7] Further, the district court dismissed the federal claims entirely because the employee's claims did "not demonstrate that the security process is integral and indispensable to their principal activities as warehouse employees fulfilling online purchase orders. Instead these allegations fall squarely into a non-compensable category of postliminary activities such as checking in and out and waiting in line to do so."[8]

The U.S. Court of Appeals for the Ninth Circuit reversed the district court, stating that "[a]lthough some district courts have held that a FLSA collective action cannot be brought in the same lawsuit as a state-law class based on the same underlying allegations, all circuit courts to consider the issue have held that the different opting mechanisms [required by FLSA and Fed.R.Civ.P. 23(c)(2)(B)(v)] do not require dismissal of the state claims."[9] The Ninth Circuit found "that FLSA's plain text does not suggest that a district court must dismiss a state law claim."[10] Further, 29 U.S.C. § 216 (b) "does not address state-law relief,"[11] and there is no evidence that "suggests that FLSA is not amenable to state-law claims for related relief in the same federal proceeding."[12] Finally, the Ninth Circuit found that the employees properly stated a "plausible claim for relief" as the "security clearances are necessary to [the] employees' primary work as warehouse employees and done for Integrity's benefit."[13]

Integrity appealed the decision of the Ninth Circuit to the U.S. Supreme Court, which granted certiorari. The issue presented to the Supreme Court was "whether the employees' time spent waiting to undergo and undergoing security screenings is compensable under the Fair Labor Standards Act of 1938, 29 U.S.C. § 201 *et seq*., as amended by the Portal-to-Portal Act of 1947, § 251 *et seq*."[14]

Prior to the *Integrity* case, the Supreme Court explained the statutory purpose for the enactment of FLSA in 1938, which "established a minimum wage and overtime compensation for each hour worked in excess of 40 hours in each workweek."[15] Further, employer violations of FLSA could result in civil liability, to include attorney's fees. Because FLSA did not define the term "work," the Supreme Court determined that "work" is an activity "required by the employer and pursued necessarily and primarily for the benefit of the employer and his business."[16]

This interpretation of FLSA's provisions resulted in a "flood of litigation" and "unions and employees filed more than 1,500 lawsuits under the FLSA. These suits sought nearly $6 billion in back pay and liquidated damages for various preshift and postshift activities."[17] Congress subsequently determined that the Supreme Court's interpretation of FLSA created an "emergency," which required statutory action in order to avoid "immense liabilities" and the "financial ruin of many employers."[18] Accordingly, Congress amended FLSA by enacting the Portal-to-Portal Act in 1947. The Act provided that employers would not be required to provide employee compensation for "walking, riding, or traveling to and from the actual place of performance of the principal activity or activities which such employee is employed to perform."[19]

In *Integrity*, the Supreme Court wrote that its consistent interpretation of FLSA, as amended by the Portal-to-Portal Act, has defined the "term 'principal activity or activities' [to] embrac[e] all activities which are an 'integral and indispensable part of the principal activities.'"[20] Further, the Supreme Court held that employee participation in post-shift loss-prevention screenings did not fall within the principal activities that the employees were hired to perform. This is apparent because "Integrity staffing did not employ its workers to undergo security screenings, but to retrieve products from warehouse shelves and package those products for shipment to Amazon customers."[21] Further, the loss-prevention screenings "were not 'integral and indispensable' to the employees' duties as warehouse workers" because the screenings are not "an intrinsic element of those activities and one with which the employee cannot

dispense if he is to perform those activities."[22] Additionally, it was not a principal activity of the employment agreement because "Integrity Staffing could have eliminated the screenings altogether without impairing the employees' ability to complete their work."[23]

The Supreme Court unanimously reversed the decision of the Ninth Circuit and held that "an activity is integral and indispensable to the principal activities that an employee is employed to perform—and thus compensable under the FLSA—if it is an intrinsic element of those activities and one with which the employee cannot dispense if he is to perform his principal activities."[24] The Supreme Court rejected the employee's argument that the screening time was compensable because Integrity required its employees to participate in post-shift screenings in order to remain employed. Rather, the Supreme Court clarified that "if the test could be satisfied merely by the fact that an employer required an activity, it would sweep into 'principal activities' the very activities that the Portal-to-Portal Act was designed to address."[25] As a resolution, the Supreme Court stated that an employee who objects to a lack of compensation for post-shift requirements should raise the issue "to the employer at the bargaining table, see 29 U.S.C. § 254(b)(1), not to a court in an FLSA claim."[26] Therefore, *Integrity* found that employees need not be compensated by their employers when employees fulfill post-shift employer requirements that are not integral and indispensable principal activities. ⊙

Endnotes

[1]*See Integrity Staffing Solutions Inc. v. Busk*, 574 U.S. ——, 135 S.Ct. 513, 515 (2014).

[2]*Id.*

[3]*Id.*

[4]*See Busk v. Integrity Staffing Solutions Inc.*, 2011 WL 2971265 at *1 (D. Nev).

[5]*See Integrity*, 135 S.Ct. at 515.

[6]*Id.*

[7]*See Busk,* 2011 WL 2971265 at *3; *Otto v. Pocono Health System*, 457 F.Supp.2d 522 (M.D. Pa. 2006).

[8]Busk, 2011 WL 2971265 at *4, citing 29 C.F.R. § 790.07(g); *IBP Inc. v. Alvarez*, 546 U.S. 21, 40, 126 S.Ct. 514, 163 L.Ed.2d 288 (2005) (holding "the fact that certain preshift activities are necessary for employees to engage in their principal activities does not mean that those preshift activities are integral and indispensable to a principal activity").

[9]*See Busk v. Integrity Staffing Solutions Inc.*, 713 F.3d 525, 528 (9th Cir. 2013); *Knepper v. Rite Aid Corp.*, 675 F.3d 249, 253-62 (3d Cir. 2012); *Ervin v. OS Rest. Servs. Inc.*, 632 F.3d 971, 976-79 (7th Cir. 2011); *Shahriar v. Smith & Wollensky Rest. Grp.*, 659 F.3d 234, 247-49 (2d Cir. 2011).

[10]*See Busk*, 713 F.3d at 528.

[11]*See Knepper*, 675 F.3d at 259.

[12]*See Ervin*, 632 F.3d at 977.

[13]*See Busk*, 713 F.3d at 531.

[14]*See Integrity*, 135 S.Ct. at 515.

[15]*Id.* at 516.

[16]*See Tennessee Coal, Iron & R. Co. v. Muscoda Local No. 123*, 321 U.S. 590, 598, 64 S.Ct. 698, 88 L.Ed. 949 (1944); *Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680, 690-91, 66 S.Ct. 1187, 90 L.Ed. 1515 (1946) (holding that a "statutory workweek" included "all time during which an employee is necessarily required to be on the employer's premises, on duty or at a prescribed workplace").

[17]*See Integrity*, 135 S.Ct. at 516.

[18]29 U.S.C. §§ 251(a)-(b).

[19]29 U.S.C. §§ 254(a)(1).

[20]*IBP, Inc. v. Alvarez*, 546 U.S. 21, 40, 126 S.Ct. 514, 163 L.Ed.2d 288 (2005) (quoting *Steiner v. Mitchell*, 350 U.S. 247, 252-253, 76 S.Ct. 330, 100 L.Ed.2d 267 (1956)).

[21]*See Integrity*, 135 S.Ct. at 518.

[22]*Id.*

[23]*Id.*

[24]*Id.* at 519.

[25]*Id.*

[26]*Id.*