

Ninth Circuit Rules Time Booting Up Computer May Be Compensable Under FLSA

The U.S. Court of Appeals for the Ninth Circuit held on October 24, 2022, in *Cariene Cadena et al. v. Customer Connexx, LLC et al.*, No. 21-16522, that the time a group of call center workers spent booting up their computers was compensable time under the federal Portal-to-Portal Act, which amended the Fair Labor Standards Act (FLSA). The fact-specific decision reversed the ruling by the U.S. District Court for the District of Nevada, which had granted summary judgment to the employer-defendant regarding the FLSA claim.

Under the Portal-to-Portal Act, employers are not required to pay employees for time spent traveling to and from their principal place of work or for time spent on certain preliminary or postliminary activities. However, if the preliminary and postliminary activities are "an integral and indispensable part of the principal activities" for which the individual is employed, then the time is compensable.

In *Customer Connexx*, call center workers employed by the employer alleged they were not paid, as required under the FLSA and Nevada law, for time spent booting up their computers before logging on to their employer's timekeeping system, nor for time spent turning off their computers after logging off. The District of Nevada found that booting up and turning off work computers were noncompensable preliminary and postliminary activities because the activities were not "principal activities" as the employees were not hired for that purpose. The Ninth Circuit disagreed and held that the district court erred in asking "whether engaging with a computer and loading a timekeeping program to clock in is integral to the employees' duties." According to the Ninth Circuit, the lower court should have asked "whether engaging the computer, *which contains the phone program, scripts, customer information, and email programs*, is integral to the employees' duties." (Emphasis added.) The Ninth Circuit reasoned that when the employees' duties are understood in this way, it becomes "clear" that "turning on or waking up their computers at the beginning of their shifts is integral and indispensable to their principal activities" and therefore compensable. Put another way, "employees could not perform their principal duties without first booting up their computers." And, employees testified that they had to turn on or wake up their computers, enter their login credentials, and wait for their desktops to load *before* they could launch the timekeeping software and clock in.

The Ninth Circuit also declined to consider two arguments advanced by the employer-defendant to argue that the district court's decision should be affirmed. First, the employer-defendant argued that the district court's decision should be affirmed because the pre-shift time was *de minimis*. Second, the employer-defendant argued that the company should not be held liable for the time because it was not aware of the alleged unpaid hours worked. The Ninth Circuit did not substantively rule on either issue, instead concluding these were "disputed factual questions" that the district court should decide in the first instance on remand.

In a footnote, the Ninth Circuit clarified that its analysis and conclusion are limited to whether booting *up* the computers is compensable time because that task is integral and indispensable to the employees' duties and therefore a principal activity under the FLSA. In contrast, because shutting down the computers is not integral and indispensable to the employees' ability to conduct calls, it would not be compensable under that theory. The Ninth Circuit remanded to the district court the determination of whether shutting down computers at the end of a shift is compensable under any other legal or factual theory.

The Ninth Circuit also cautioned that it offered "no opinion" on whether booting up computers would be compensable under the FLSA if the employees "worked remotely or used their personal computers to perform these duties."

Employers should contact experienced counsel if they have any questions about the compensability of time for their employees.

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