

Labor & Employment Law

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Time Spent Booting Up Computers May Be Compensable Under the Fair Labor Standards Act

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On October 24, 2022, the Ninth Circuit Court of Appeals issued a decision in *Cadena v. Customer Connex LLC*, concerning whether the time employees spend booting up and shutting down their computers is compensable under the Fair Labor Standards Act ("FLSA"). Although the case arose out of a call center in Las Vegas, Nevada, where the employees' principal duties included answering customer phone calls, this case may affect all employers whose employees spend time turning on their computers to work.

Background

In *Cadena*, the employees worked in a call center. The phone was a "soft phone," which operated only through the company's computer system. In order to answer a customer's phone call, the employees had to boot up the computer and log into the phone program. Employees estimated that it took anywhere from six to twelve minutes to boot up the computer, log into the phone, and clock in on the company's timekeeping system.

Two employees brought an action for unpaid wages under the FLSA, arguing the time it took to boot up their computers before clocking in should be compensable. The district court ruled such time was not compensable because starting and turning off employees' computers to clock in and

out was not a principal activity for which the employees were hired. Thus, the time fell under the exception set forth in the Portal-to-Portal Act.

The Portal-to-Portal Act, which amended the FLSA, excludes from compensable time any "activities which are preliminary to or postliminary to" the principal activities the employee is employed to perform. In analyzing this exception, the U.S. Supreme Court previously determined preparation of equipment necessary to perform the employees' principal activities is compensable. Waiting in line to clock in and out and security screenings, on the other hand, were found to not be an integral element of the job and thus not compensable under the FLSA. After the district court granted summary judgment, the employees appealed to the Ninth Circuit.

The Ninth Circuit's Ruling

The parties in *Cadena* agreed the employees' principal activities were receiving customer phone calls and scheduling appliance pickups, and that the employees received phone calls exclusively through their computers. Based upon these undisputed facts, the Ninth Circuit reasoned the employees' work could not be performed without turning

on their computers. Thus, turning on the computer was integral and indispensable to the employees' duties and, therefore, compensable under the FLSA.

The court limited its holding to turning on the computer at the beginning of the shift. The court found shutting down the computer was not integral to making calls, and was therefore likely not compensable. The court was also careful to explain that its holding does not apply to all pre-shift or post-shift tasks employees may be asked to perform. Rather, courts must carefully scrutinize whether a task is integral to an employees' principal activities to determine whether it should be compensable or whether it is excludable under the Portal-to-Portal Act exception.

In addition to analyzing the Portal-to-Portal Act, the employer argued the court should affirm summary judgment in its favor on two other alternative grounds. First, the employer argued that the *de minimis* doctrine applied, *i.e.*, because the time was negligible and not practical to precisely record, it is not compensable. Federal courts have recognized the *de minimis* doctrine previously, although the U.S. Supreme Court recently called the doctrine into question when applying it to the FLSA. Second, the employer argued that it was entitled to summary

judgment because it did not have actual or constructive knowledge of the additional time the employees “worked” turning on their computers but did not report in the company’s timekeeping system.

The court declined to address either argument and remanded the issues to the district court for further consideration.

Takeaway

Employers should now be more cognizant of any pre-shift or post-shift duties that employees may need to perform, including booting up their computer

to clock in and work. Under *Cadena*, if booting up the computer is integral and indispensable to performing the employees’ duties, it may be compensable under the FLSA.

The *Cadena* decision also implicitly raises the question of whether this time will be compensable under California law. California law does not have its own version of the Portal-to-Portal Act, and California courts have repeatedly held an employer must compensate employees for all time worked.■