

McCONNELL VALDÉS

PO BOX 364225, SAN JUAN, PUERTO RICO 00936-4225

TELEPHONE (787) 759-9292 • FAX (787) 759-9225

<http://www.mcvpr.com>

MEMORANDUM

TO : Clients and Friends

FROM : Labor and Employment Law Department of McConnell Valdés

RE : United States Supreme Court decision establishing compensable activities

DATE : November 10, 2005

On November 8, 2005, the United States Supreme Court unanimously held that the time employees spend donning and doffing protective gear or clothes before they engage in productive labor for which they are primarily hired is compensable under the Fair Labor Standards Act, as amended ("FLSA"). IBP, Inc. v. Alvarez, et. al., 546 U.S. ____ (2005). Likewise, the Supreme Court held that, during a continuous workday, the time employees spend walking after donning the protective gear or clothes and before doffing the protective gear or clothes is compensable under the FLSA.

Previous to this decision, there was a split between the Courts of Appeals for the First and Ninth Circuits as to whether this type of "walking time" was compensable under the FLSA. However, both courts had previously decided, and now the Supreme Court affirmed, that the donning and doffing of protective gear or clothes is "integral and indispensable" to the work of said employees. As such, the donning and doffing were held to be "principal activities" of their employment. Consequently, according to the "continuous workday rule," the Supreme Court held that everything that occurs after the beginning of the employee's first principal activity (donning) and before the end of the employee's last principal activity (doffing) during the same workday is compensable as well.

Based on that rationale, the Supreme Court concluded that the locker rooms where the special gear is donned and doffed are a relevant "place of performance" of the principal activity that the employee performs. Accordingly, the "walking time" from the locker rooms to the production area and from the production area to the locker rooms is compensable.

As to the "waiting time," the Supreme Court held that the time employees spend waiting to don the first piece of gear that marks the beginning of the continuous workday is not compensable. However, the time spent waiting to doff the gear is compensable under the FLSA. The Supreme Court did not specifically address the amount of time that may qualify as "de minimis" so as to exclude the employer from payment under the FLSA.

If you have any question, or wish additional information regarding the implications of this important decision, please contact any of the attorneys at the Labor and Employment Law Department of McConnell Valdés.