ROBINSON & COLE LLP
Labor, Employment & Benefits

US Supreme Court Rules Time Spent Walking between Locker Room and Factory Floor to Don/Doff Work Gear Is Compensable under the FLSA

In IBP, Inc. v. Alvarez (11/8/05) the U.S. Supreme Court ruled that time spent by employees donning protective clothing and safety gear and the time spent walking between the locker room and the factory floor is compensable under the Fair Labor Standards Act. Similarly, employees are entitled to be paid for the time spent waiting to doff the gear at the end of the day. The court ruled that "[a]ny activity that is 'integral and indispensable' to a 'principal activity' is itself a 'principal activity,'" and, as such, is compensable under the FLSA. However, the court explained that time spent walking to the locker room and waiting to don the gear at the beginning of the day is not compensable under the FLSA because these are activities that occur before the start of the workday.

Claims of Interference with Connecticut FMLA Rights Should Be Analyzed under a Strict Liability Standard

Kim Persky, an executive at Cendant Corporation in its Sidewalk unit, took maternity leave. Following a reorganization of Cendant's management structure, Persky was offered the opportunity to apply for several different positions but no specific replacement position was explicitly offered to her. Persky did not apply for any of the positions. Cendant later informed Persky that it considered her to have voluntarily resigned. In response, Persky filed a complaint with the Connecticut Department of Labor claiming that Cendant violated Connecticut's Family and Medical Leave Act by interfering with her right to be reinstated to her previous position following her maternity leave. After the Labor Department ruled in Persky's favor, Cendant appealed to the Connecticut Superior Court and, after losing its appeal, further appealed to the Appellate Court, after which the matter was transferred to the Connecticut Supreme Court.

In Cendant Corp. v. Commissioner of Labor (10/25/05), the Connecticut Supreme Court ruled that a claim for interference with FMLA rights must be analyzed under a strict liability standard and that the employer's motives are irrelevant. The court explained that, in order to succeed on this claim, an employee must prove that she was denied a substantive right under the FMLA and that the denial of that right was caused in part by her leave. The employee is not required to prove that the employer intended to interfere with her FMLA rights. The court further explained that, in order to defend itself against a claim of interference under the FMLA, the employer must show that it would have made the same decision even if the employee had not exercised her FMLA rights. The court specifically rejected Cendant's argument that the McDonnell-Douglas burden-shifting standard, which is applied in FMLA discrimination claims, should also apply to FMLA interference claims.

Connecticut Supreme Court Rules that Snow Plow Drivers Must Be Paid when they Show Up for Work, Not when Phoned and Told to Report to Work

When the Town of Tolland needs snow plow drivers, a town official calls employees to inform them of the town's need and to ascertain their availability. The official then posts a schedule of job assignments and employees learn of their assignments when they arrive at work. The town paid employees from the time they arrived at work until they completed their assignments or for four hours of work, whichever was greater. The Commissioner of the Connecticut Department of Labor filed a lawsuit on behalf of 22 town employees, claiming that those employees also should have been paid from the time when they received the call asking them to report to work through the time they reported to work. The trial court ruled in favor of the town and the Commissioner appealed. In Cashman v. Town of Tolland (10/18/05) the Connecticut Supreme Court ruled that the snow plow drivers were properly paid by the town and were not entitled to any compensation from the time they were called in to work.

Employer's Duty to Provide Safe Workplace Does Not Extend to Employee's Wife

John Holdampf worked for the Port Authority of New York and New Jersey for 36 years. During much of that time, he handled products that contained asbestos. To protect its employees, the Port Authority issued each employee, including Holdampf, several uniforms. In addition, employees were able to place their dirty uniforms in a designated place at the work site, and the Port Authority would then send the uniforms offsite for cleaning. Despite these services, however, Holdampf frequently brought his dirty uniforms home for his wife to wash. After his wife was diagnosed with mesothelioma, the Holdampfs sued the Port Authority, claiming that it should have warned Holdampf and his family about the risk of contamination if his work clothes were worn home, and that adequate instructions should have been provided.

In Holdampf v. AC&S, Inc. (10/27/05), the New York Court of Appeals ruled that the Port Authority had no relationship with Holdampf's wife that would give rise to a duty to protect her from exposure to asbestos dust. The court explained that, although an employer has a responsibility to provide a safe workplace, the duty does not extend to individuals who are not employees. In addition, the court ruled that the employer was not in a position to protect the wife from the risk of harm because it was entirely dependent upon the employee's willingness to comply with and carry out risk-reduction measures, such as wearing clean clothes home from work and warning his wife about the dangers of washing his soiled uniforms.

Termination of Bi-Polar Employee Was Not Based on Discriminatory Animus under the ADA

Kevin Tobin was a sales representative at Liberty Mutual. Twelve years into his employment, he started treatment for bi-polar disorder, a condition which impaired his ability to concentrate, organize, prioritize tasks, and work efficiently. Tobin did not inform Liberty Mutual of his condition until 21 years later. During the years prior to and after informing his employer of his condition, Tobin failed to meet sales quotas and received negative evaluations, written warnings, and probations.

Tobin took two short-term disability leaves and, after his second leave, Liberty Mutual hired a nurse to help him perform his duties as a sales representative. Tobin also repeatedly requested that Liberty Mutual assign him "mass marketing accounts" that would have provided him with access to a large number of potential clients and would have made it easier for him to meet his quotas. Liberty Mutual refused, claiming that those accounts are awarded based on merit. Tobin continued to fail to meet sales quotas and Liberty Mutual terminated his employment. Tobin sued Liberty Mutual, claiming that it terminated him with discriminatory animus, failed to accommodate him, and failed to engage in the interactive process in violation of the Americans with Disabilities Act.

In Tobin v. Liberty Mutual Insurance Co. (11/3/05), the U.S. Court of Appeals for the First Circuit ruled that Tobin's continued low sales rates provided sufficient evidence to find that his termination was not motivated by an intent to discriminate. In addition, the court ruled that, because Liberty Mutual continued a dialogue with Tobin about his disability and possible accommodations, it met its duty to engage in the interactive process required by the ADA. On Tobin's failure to accommodate claim, however, the court determined that there was enough conflicting evidence on whether Tobin should have received "mass marketing accounts" to warrant a jury trial on that issue.

FMLA Fitness-for-Duty Certification Is Not Required To Be Detailed

Linda Brumbalough was the Clinical Director for Camelot Care Centers, which provided services to abused and neglected children in state custody. When Brumbalough went on leave under the Family and Medical Leave Act for health problems, her employer informed her that she was required to present a

fitness-for-duty certificate from her physician on specified dates before returning to work. When Brumbalough submitted a vaguely-worded certification after the deadline set by her employer, Camelot Care Centers terminated her. She sued Camelot, claiming it violated the Family and Medical Leave Act.

In Brumbalough v. Camelot Care Centers Inc. (11/2/05), the U.S. Court of Appeals for the Sixth Circuit ruled that the employee's FMLA-protected leave ends if an employee fails to submit a re-certification form requested by the employer. Thus, Camelot's termination of Brumbalough's employment did not violate the FMLA even though she was terminated before she had exhausted the 12 weeks of leave provided under the FMLA.

According to the court, however, Camelot violated Brumbalough's right to reinstatement. As explained by the court, "Once an employee submits a statement from her health care provider which indicates that she may return to work, the employer's duty to reinstate her has been triggered under the FMLA." Despite the fact that the fitness-for-duty certificate did not provide details on how Brumbalough would perform her job duties, the court ruled that the employer was required to reinstate Brumbalough upon receipt of the doctor's note. If the employer believed the note was insufficient, it should have sought clarification from Brumbalough's doctor, rather than filling her position.

EEOC Issues Final Report on Best Practices for Employment of People with Disabilities in State Government

On October 31, 2005, the U.S. Equal Opportunity Employment Commission issued a Final Report on Best Practices for Employment of People with Disabilities in State Government The report summarizes the best practices of the nine states that promote the hiring, retention and advancement of disabled employees within state government.