

**The FLSA After *IBP v. Alvarez*:
The Donning of a Brand New Work Day?**

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I. INTRODUCTION

The Fair Labor Standards Act (“FLSA”) establishes a minimum wage and provides a mandatory scheme for overtime pay. The Washington state equivalent, the Washington Minimum Wage Act (“WMWA”) parallels the FLSA, also addressing wage and overtime requirements. Washington courts use the FLSA as persuasive authority when interpreting the WMWA. However, at times the FLSA and the WMWA diverge. At such times, it is imperative that employers abide by whichever law would provide the most protection to the employee.

The FLSA and WMWA requires payment of a minimum wage and maximum 40 hour “workweek.” 29 U.S.C. § 207(a)(1). For work above and beyond 40 hours in the “workweek,” an employee must receive at least 1 ½ times the regular wage. *Id.* Yet exactly what constitutes compensable “work” or a “workweek” is left undefined by statute, left to the courts to develop.

II. WHAT IS “WORK TIME” UNDER THE FLSA?

A. Generally

Working time under the FLSA is generally defined as that time “controlled or required by the employer and pursued necessarily and primarily for the benefit of the employer and his business.” Tennessee Coal, Iron & R.R. Co. v. Muscoda Local No., 123, 321 U.S. 590, 598 (1944). Federal regulations provide that the “workday” includes:

[T]he period between the commencement and completion on the same workday of an employee’s principal activity or activities. It includes all time within that period whether or not the employee engages in work throughout all of that period.

29 C.F.R. § 790.6.

An activity need not require physical or mental exertion in order to constitute work. “[A]n employer, if he chooses, may hire a man to do nothing, or to do nothing but wait for

something to happen.” 29 C.F.R. 785.7 (quoting Armour & Co. v. Wantock, 323 U.S. 126, 133, 89 L.Ed. 118, 65 S. Ct. 165 (1944); Skidmore v. Swift, 323 U.S. 134 (1944)).

“Work not requested but suffered or permitted is work time.” 29 C.F.R. § 785.11.

Therefore an employer must pay for work performed for its benefit whether authorized or not if it knows or has reason to believe that it is being done. 29 C.F.R. § 785.11-13; RCW 49.46.010(3). The existence of a policy forbidding off-the-clock work is insufficient. An employer must actively enforce violations of its off-the-clock work policy against anyone it or its supervisors know to be performing off-the-clock work. Reich v. Dep’t of Conservation & Natural Resources, 28 F.3d 1076, 1083 (11th Cir. 1994). “Management has the power to enforce the rule and must make every effort to do so.” Id. (quoting 29 C.F.R. 785.13). In order to enforce its off-the-clock policy, employers should consider actual sanctions rather than mere reminders of the policy’s existence.

B. Travel Time

The employer does not generally have to pay the employee from home to work travel. Anderson v. State of Washington, 115 Wn. App. 452, 63 P.3d 134 (2003) (holding 40 minute ferry commute time to and from mainland to island prison was not compensable). However, once work begins, the employer is obligated to pay wages for travel time to and between work sites. 29 C.F.R. § 785.34 & .35; Tennessee Coal, Iron & R. Co. v. Muscoda Local No. 123, 321 U.S. 590 (1944). Employees who go directly to the work site are generally owed wages only for the time at the work site performing the principal activity. 29 C.F.R. § 785.35 & .38. However, wages may be owed for travel from home to the initial work site and from the final site if employee is required to perform some service while traveling to and from the worksite such as transporting heavy tools, equipment or other workers. 29 C.F.R. § 785.38 & .41; WAC 356-15-

040. Chao v. Akron Insulation & Supply, Inc., 2005 U.S. Dist. LEXIS 9331 (N. D. Ohio May 5, 2005) (“shop time” in which employees meet at a common location to gather materials before heading off to primary job sites compensable, as is subsequent drive time to the job sites).

Travel time to distant work locations involving non-exempt employees has some special rules. Time traveling on special, one-day, out of town trips (except for travel between home and terminal) is compensable. 29 C.F.R. § 785.37; See Mendez v. The Radec Corp., 232 F.R.D. 78, 88 (W.D.N.Y. Nov. 22, 2005). However, where one-day out of town trips are not “special” or “unusual” but a “contemplated and . . . mandated” part of employment as provided in contract, travel time for the one-day trip is not compensable. Imada v. City of Hercules, 138 F.2d 1294, 1297 (9th Cir. 1998). For overnight stays, the travel time during the normal work hours is compensable even though the travel may occur on a non-normal workday. 29 C.F.R. § 785.39. Travel that does not occur within the normal work hours is not required to be compensated, if it is on common carriers or as a passenger. Id. If the employee is driving a motor vehicle, all travel time is compensable. 29 C.F.R. § 785.39. The employer must pay for any work actually performed while traveling. 29 C.F.R. § 785.41. Recent federal regulations provide that an employee’s commuter travel in an employer’s vehicle to the job site and incidental activities is not compensable if there is an agreement between the employer and the employee, or the employee’s representative, on the use of the vehicle for commuting, and the travel is within the normal commuting area. 29 C.F.R. § 254(a).

C. Waiting Time

“Periods during which an employee is completely relieved from duty and which are long enough to enable him to use the time effectively for his own purposes are not hours worked.” 29 C.F.R. § 785.16(a). But time spent waiting on the employer’s premises is generally considered to be work time, unless the employee is on premises for his own benefit. 29 C.F.R. § 785.14-.16.

Whether waiting time is compensable hinges upon determination of whether the employee is “engaged to wait” or “waiting to be engaged.” Skidmore v. Swift & Co., 323 U.S. 134, 137 (1944); Chao v. Akron Insulation & Supply, Inc., 2005 U.S. Dist. LEXIS 9331, at *25 (N.D. Ohio 2005). Courts consider (1) whether the wait time is predominantly for the employer’s benefit and (2) whether the employees could effectively use wait time for their own purpose. Chao, 2005 U.S. Dist. Lexis 9331, at *25 (employees engaged to wait entitled to compensation, even while drinking coffee and socializing); 29 C.F.R. § 785.16(a); See also Armour & Co., v. Wantock, 323 U.S. 126, 133 (1944).

For instance, in Twaddle v. RKE Trucking Co., the defendant company enforced a written policy requiring truck drivers to arrive by 6 a.m. 2006 U.S. Dist LEXIS 18028, *13-17 (S.D. Ohio March 26, 2006). At 6 a.m., the truck drivers warmed up their trucks, performed pre-trip inspections, and awaited dispatch, sometimes leaving as late as 8:30 or 9:00 a.m. Id. During much of this 2 ½ - 3 hour gap, the drivers would drink coffee and socialize. Id. Employing the same two factors used by the Chao court, the Twaddle court found the truck drivers’ waiting time was predominantly for the company’s benefit and that the drivers were not free to use the waiting time for their own purposes. Id. (citing Wirtz v. Sullivan, 326 F.3d 946, 948-49 (5th Cir. 1964); Mireles v. Frio Foods, Inc., 899 F.2d 1407, 1413-14 (5th Cir. 1990)). Therefore, the time was compensable.

Contrarily, in United Transportation Local 1745 v. City of Albuquerque, 178 F.3d 1109, 1117-18 (10th Cir. 1999), the Tenth Circuit held the FLSA did not require the city to compensate bus drivers on split shifts for the 4-5 hour interlude between shifts. The court reasoned that because the bus drivers were able to do anything except drink alcohol during the time off, they were not under the employer’s control and thus not working. “The fact that the split shift period

is less convenient or less desirable than a straight shift does not mean that the drivers are on duty and deserving compensation.” Id.

D. On-Call employees

An employee is considered working and must be paid if he or she is required to remain on or so close to the employer’s premises that the time cannot effectively be used by the employee for his or her own purposes. RCW 49.46.010(5)(j); 29 C.F.R. § 785.1 & .17. Courts consider several factors determine whether employees can make effective personal use of the on-call time, including: (1) whether there is an on-premises living requirement; (2) whether there are excessive geographical restrictions on the employee’s movements; (3) whether the frequency of calls is unduly restrictive; (4) whether a fixed time limit for response is unduly restrictive; (5) whether the on-call employee may easily trade on-call responsibilities; (6) whether the use of a pager may ease restrictions; and (7) whether the employee actually engages in personal activities during call-in time. Brigham v. Eugene Water & Electric Board, 357 F.3d 931, (9th Cir. 2004) (quoting Owens v. Local No. 169, 971 F.2d 347, 351 (9th Cir. 1992)); See also Chelan County Deputy Sheriffs’ Ass’n v. Chelan County, 109 Wn.2d 282, 293, 745 P.2d 1 (1987) (considering in addition parties’ agreement, ability to engage in personal activities, and purpose of requiring availability during on-call time). While determinations are made on a case by case basis, the Washington Court of Appeals has held that where an on-call employee is free to leave the employer’s premises, only to respond when contacted, she may use that time for his or her own purposes and need not be paid. Goff v. City of Airway Heights, 46 Wn.App. 163, 166, 73 P.2d 691 (1986).

E. Sleeping time and Resident Employees

1. FLSA

Where an employee works for more 24 hours or more at a time, up to 8 hours' time may be excluded by employer/employee agreement. 29 C.F.R. § 785.22. The 8 hour exclusion may be used only by agreement and only where the employer provides adequate sleeping facilities and uninterrupted sleep. Id. In the absence of agreement, the 8 hours sleeping time and lunch period will be considered hours worked and compensable. Id. Where the sleep time is interrupted by calls to duty, the employee must be compensated for the interruption. Id. Where the employee receives 5 hours' or less of sleep as the result of interruptions, the entire rest period must be compensated. Id.

An employee who resides on his employer's premises for "extended periods of time" is not considered to be working during the entire period of residence. 29 C.F.R. 785.23. The rule reasons that under such circumstances the employee necessarily engages in private pursuits. Courts have found that periods of time as brief as one week are considered "extended periods of time" for purposes of the rule. Shannon v. Pleasant Valley Community Living Arrangements, 82 F. Supp. 2d 426 (W.D. Pa. 2000).

2. WMWA

RCW 49.46.010(5)(j) excludes certain resident and "on call" employees from coverage under the WMWA:

(5) "Employee" includes an individual employed by an employer but shall not include:

...

(j) Any individual whose duties require that he or she reside or sleep at the place of his or her employment or who otherwise spends a substantial portion of his or her work time subject to call, and not engaged in the performance of active duties.

In Berrocal v. Fernandez, 155 Wn.2d 585, 588. 121 P.3d 83 (Wash. October 13, 2005), two shepherds in a temporary foreign worker program lived on a ranch twenty four hours per day, seven days a week, feeding and guarding sheep. Id. The plaintiff shepherds were paid \$650 per month. Id. The shepherds brought action under the MWA, claiming they were entitled to pay for lost wages. Id. at 589. Resisting the action, defendants relied upon RCW 49.46.010(5)(j), insisting the provision excludes resident employees from coverage. Id.

At trial, plaintiffs insisted the statute contains two separate requirements that must be met: (1) the employee must reside at the place of employment; and (2) spend a substantial portion of her time not engaged in the performance of active duties. Id. at 591. Defendants, on the other hand, insisted that the statute recognizes two distinct types of employees not covered by the FLSA: (1) those who reside or sleep at their place of employment; and (2) those who otherwise spend a substantial portion of work time not actively engaged in work. Id.

The Washington Supreme Court rejected plaintiffs' reading of the statute, declaring that the syntax of the statute required that the statute be read as two separate types of employees not covered by the WMWA. The Washington Supreme Court ruled that, under the statute, (1) those who reside or sleep at their place of employment; and (2) those who otherwise spend a substantial portion of work time subject to call, but not engaged in the performance of active duties do not qualify as employees for purposes of the WMWA. Id. at 598.

F. Rest and Meal Periods

Under the FLSA, bona fide meal periods in which an employee is completely relieved from duty for the purposes of eating regular meals do not count as work time for purposes of overtime. 29 C.F.R. § 785.19. An employer is not required to pay wages for "bona fide" meal periods if: (1) the meal period is at least 30 minutes; (2) the employee is completely relieved from all duties during the period; and (3) the employee is free to leave the duty post. 29 C.F.R. §

785.19. If an employee is required to eat at the desk, he or she is working and owed wages for that meal period. Twaddle v. RKE Trucking Co., 2006 U.S. Dist. LEXIS 18028 at * 26-27 (where truck drivers, with employer permission, worked through lunch court found lunch break to be “predominantly for the employer’s benefit” and, therefore, compensable); Summers v. Howard University, 127 F. Supp. 2d 27 (D.C.D.C. 2000) (during meal break, employees were required to remain in uniform, remain on campus unless they checked in their weapons and equipment on their own time which could consume up to 15 minutes of the 30-minute lunch break, respond to emergencies and crimes committed in their presence, and respond to public inquiries); But see Mendez, 232 F.R.D. at 83 (“not every interruption of an employee’s lunch break renders the entire period compensable”).

While the FLSA itself does not require the provision of rest or meal periods, Washington regulations require a thirty minute meal period within two to five hours after starting, which does not have to be paid unless the employee is required to be on duty or at the work site for the benefit of the employer. WAC 296-126-092. Paid rest periods of at least ten minutes for each four hours of working time are also required. WAC 296-126-092. If an employer does not provide a paid 10-minute break at least every 3 hours, the employee will have a wage claim under RCW § 49.52.020 and, more importantly, a probable overtime claim. Wingert v. Yellow Freight Systems, Inc., 146 Wn.2d 841, 849, 50 P.3d 256 (2002) (holding Washington’s policy of protecting the health and welfare of its employees by requiring rest periods could not be abrogated by collective bargaining agreements).

Under the WMWA, an employer may satisfy its meal and rest break requirements even if it requires the employees to be “on call” during such breaks, provided that the “on call” breaks are fully compensated and the employee’s break meets the required period of time . White v.

Salvation Army, 118 Wn. App. 272, 75 P.3d 990 (2003). The Washington Court of Appeals reasons that where an employer compensates its on call workers for all breaks without deduction, it has satisfied its duties. To somehow penalize the employer for such a break because it is “on call” would be duplicative recovery for the employee.

G. Lectures, Meetings and Training

Time spent attending lectures, meetings, and training programs is compensable unless the employee’s attendance of a specific event meets each of the following four criteria:

- (1) Attendance is outside the employee’s regular working hours;
- (2) Attendance is in fact voluntary;
- (3) The course, lecture, or meeting is not directly related to the employee’s job; and
- (4) The employee does not perform any productive work during such attendance.

29 C.F.R. 785.27.

Attendance is involuntary where the employer requires attendance or even if the employee merely understands or is led to believe “that his present working conditions or the continuance of his employment would be adversely affected by nonattendance.” 29 C.F.R. 785.28. An event designed to make the employee handle her job more effectively, as opposed to learning how to perform a different job, is directly related to the employee’s job. 29 C.F.R. 785.29; Twaddle v. RKE Trucking Co., 2006 U.S. Dist. LEXIS 18028 at *27-33 (employer’s failure to compensate employees for “company meetings” and random drug tests constituted a violation of the FLSA).

III. PORTAL-TO-PORTAL ACT

A. Background: A brief history of the Portal-to-Portal Act.

1. The Portal-to-Portal Act

Through decisions such as Tennessee Coal, Armor & Co. v. Wantock, 323 U.S. 126 (1944), and Anderson v. Mt. Clemens Pottery Co., 328 U.S. 680 (1946), the U.S. Supreme Court expanded the definition of work near the middle of the twentieth century. For example, in

Anderson, employees were required to first punch a time clock and then walk up to 12 minutes away to their designated work areas. The Court held the walking time, in addition to time spent donning aprons and overalls, was compensable.

In 1945, Congress enacted the “Portal-to-Portal Act” to limit the effect of such Supreme Court’s rulings. The Portal-to-Portal Act distinguishes between claims for wages that were already “existing” before the Act and “future claims” for wages. With respect to existing claims, employers were only liable for activity compensable by express contract or established custom. With respect to future claims, the Portal-to-Portal Act allows for liability beyond that compensable by contract or custom, but sets general limits on such liability. Specifically, the Portal-to-Portal Act provides that the following activities are not compensable:

- (1) 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; and
- (2) activities which are preliminary to or postliminary to said principal activity or activities

Portal-to-Portal Act III, § 4(a)(1-2); 29 U.S.C. § 254(a).

2. Travel to the Place of Performance and the Continuous Workday Rule

The Department of Labor later clarified the effect of the Portal-to-Portal Act with the “continuous workday rule.” The rule itself is logical: the workday continues from commencement to completion. Yet, in application, the rule significantly tempers the effect of the Portal-to-Portal Act. Despite the fact that walking to and from the actual place of performance on the employer’s premises is generally not compensable, under the continuous workday rule such travel time is compensable if an employee begins work in one location on the employer’s premises, then travels to a different location on the employer’s premises. 29 C.F.R. 790.6 (2005). The work commenced before “traveling to and from” another place of actual performance on the employer’s premises makes the subsequent travel time compensable.

3. Preliminary and Postliminary Work Generally Not Compensable

Under the Portal-to-Portal Act, the employer need not pay wages for activities which are preliminary or postliminary to the principal activity, unless those specific activities are compensable by contract, custom or practice. 29 C.F.R. § 785.9(a). For instance, “ordinary” clothes-changing that is “merely a convenience to the employee” is not compensable. U.S. Dep’t of Labor letter, dated June 6, 2002, to Samuel D. Walker (citing 93 Cong. Rec. 2297-98 (1947)). In Steiner v. Mitchell, the U.S. Supreme Court considered whether workers in a battery plant should be compensated for time showering and changing before and after each shift. 350 U.S. 247, 248 (1956). Generally, time spent changing clothes or washing at the beginning or end of the work day is not considered hours worked. 29 C.F.R. § 785.9, .24 & .25. However, in Steiner, the workers were required to shower and change clothes at the beginning and end of each shift for safety reasons. Distinguishing this activity from the preliminary and postliminary activities excluded from compensation by the Portal-to-Portal Act, the Supreme Court reasoned that any activities which are “integral and indispensable” to the principal activity are necessarily a compensable part of the principal activity.

As the Ninth Circuit recognized in Ballaris v. Walker Siltronic Corporation, employer expectations, even in the absence of safety concerns, may provide the basis for finding activities to be “integral and indispensable.” 370 F.3d 901 (9th Cir. 2004). In Ballaris, a silicon wafer manufacturing company required that certain employees not only wear gowns to avoid contamination, but also required that they wear a “plant uniforms” beneath the gowns. Id. at 904. Employees were not permitted to take the uniforms off-site and, therefore, spent 20-30 minutes each day changing into and out of the plant uniforms at work. Id. Despite the fact that putting on the not required little exertion and was not a safety precaution, the Ninth Circuit found changing in and out of plant uniforms to be compensable. Id. at 911-12. The court reasoned that

because the activity was performed at the company's behest and for the company's benefit, it was an integral and indispensable activity. Id.

It is important to note that an employer may lose Portal-to-Portal Act protection even if the time is not compensable if the employer agrees "by contract, custom or practice" to pay employees for it. Thus, employees or a union may ask for a token payment for normally uncompensated time and "agree" that the time will not count toward overtime computations. However, by compensating for the time, the employer has converted this to work time which, by law, must be compensated and is not subject to waiver—even under a collective bargaining agreement.

B. An Old Act Learns New Tricks: IBP v. Alvarez and Tum v. Barber Foods.

In November 2005, in the first case in which newly-appointed Justice John G. Roberts participated, the Supreme Court analyzed the Portal-to-Portal Act in the context of the Continuous Workday Rule and Steiner. The Court considered two novel questions: (1) Is time walking to and from locker rooms either after donning, or before doffing, protective gear compensable; and (2) Is time spent waiting in line for protective gear compensable? A unanimous Court ruled that walking to and from a locker room to a work station either after donning or before doffing of protective gear is compensable, but waiting in line for such gear is not.

1. IBP v. Alvarez: Donning and Doffing of Protective Gear is Compensable

In Alvarez, production workers in a meat plant in Pasco, Washington were required to wear outer garments, hard hats, hairnets, earplugs, gloves, sleeves, aprons, leggings, boots, and additional protective equipment. IBP paid the workers four minutes' time for changing into and out of their protective gear, but otherwise started the compensable work day with the first piece of meat processed. IBP did not pay workers for time spent traveling on IBP property between

the locker room and the place principal activity, nor for time spent traveling from the principal activity back to changing out of their gear. Plaintiffs, a class of IBP workers, brought action to recover compensation for time spent traveling between changing in and out/principal activity.

IBP conceded that time spent “donning and doffing” protective equipment was compensable, but argued that time spent walking between the locker rooms and the principal place of work was excluded from the FLSA by § 4(a)(1) of the Portal-to-Portal Act. Essentially, IBP attempted to distinguish between activities which are “integral and dispensable” to the principal activity under Steiner and the “principal activity” itself. In IBP’s eyes, the clock ran while employees “donned and doffed” their protective gear, then stopped until the employees started the “principal activity.”

The Supreme Court rejected IBP’s argument, insisting that there can be no work “sufficiently ‘principal’ to be compensable, but not sufficiently principal commence the work day” and activate the Continuous Workday Rule. The Court held that “any activity that is ‘integral and indispensable’ to a ‘principal activity’ is itself a ‘principal activity’ under § 4(a) of the Portal-to-Portal Act.” Furthermore, pursuant to the Continuous Workday Rule, any work occurring after the beginning of the first principal activity and before the end of the last principal activity is compensable. In Alvarez, because the workday began with the donning and doffing of equipment, the workday continued while the employees traveled from the locker room to the principal activity.

The Court distinguished this case from cases in which employees punch a time clock and then walk to the place of principal activity, such as Anderson, 328 U.S. 60. The Portal-to-Portal Act provides time spent walking between the time clock and the principal activity is not compensable because it occurs before the workday and is, thus, a preliminary activity.

Nonetheless, just as walking from one principal activity to another is compensable time pursuant to 29 C.F.R. § 790.7(c), so too time walking between the locker room and the first principal activity. Where the workday begins with the donning and doffing of equipment “integral and indispensable” to the principal activity, post-donning and pre-doffing time on the employer’s premises is compensable. The Court did distinguish between the protective gear in the Alvarez case and normal safety gear such as glasses and hard hats which are not compensable primarily because the time spent putting these on is “de minimus” and thus expressly excluded under the Act.

2. Tum v. Barber Foods: Waiting in Line for Protective Gear is Not Compensable.

In Tum v. Barber Foods, the U.S. Supreme Court considered whether employees of a Maine-based chicken-processing company could be compensated for time spent waiting in line for protective gear. The defendant argued that such waiting time was a “preliminary” activity and thus barred by § 4(a)(2) of the Portal-to-Portal Act. The court explained that the fact that certain preshift activities are necessary for employees to engage in their principal activities does not mean those preshift activities are always “integral and indispensable” to the principal activity. For instance, the court set forth, time walking to and from a time clock from the principal activity is certainly necessary, but, at the same time, not integral and indispensable to the principal activity and, thus, not compensable. The Court held that § 4(a)(2) of the Portal-to-Portal Act excluded time spent waiting to don and doff protective gear from coverage by the FLSA.

3. The Effect of the Recent Rulings.

In sum, where an activity is “integral and indispensable” to the principal activity, it is part and parcel of the principal activity. As a result, the time between the first and last “integral and

indispensable” duty in a work day is compensable. However, it is possible for an activity, such as waiting in line, to be necessary for employees without being “integral and indispensable” to the job. Donning and doffing protective gear is integral and indispensable to the performance of certain jobs, but the time spent waiting for such gear is not generally integral and indispensable and thus is not compensable.

Employers are already feeling aftershocks of the IBP decision. Last week an Arkansas poultry processing company agreed to a \$1,235,000 settlement to 5,482 employees for alleged unpaid overtime. Chao’s v. George’s Processing Inc., No. 02-3479 (W.D. Mo. May 8, 2006). The DOL alleged the employer failed to pay the poultry workers for time spent donning and doffing protective gear and for post-donning and pre-doffing time walking to and from workstations. Settlements such as this make it clear that the DOL and employees have both a renewed interest in donning and doffing violations and a new, powerful weapon in IBP v. Alvarez.

Some worry that the Court’s ruling will lead to further broadening of the concept of working time, a trend made more troubling by technology allowing employees to perform more core work tasks from home. For instance, where an employee is required to perform some part of her job from home via telecommunications, then travels to work, the employee’s drive time to work may be compensable. In Dooley v. Liberty Mutual Ins. Co., 307 F. Supp. 2d 234, 243 (D. Mass 2004), where insurance appraisers performed work on laptops before and after their daily work shifts, the court held that the work time, as well as the travel time to and from home, was compensable. While the decision came down before the Supreme Court’s determination of IBP and Tum, the reasoning in Dooley closely conforms to the Supreme Court’s ruling.

But some courts have already started to draw the line limiting the potential breadth of work time under IBP and Tum. A New York federal district court considered whether brief-case-toting city fire alarm inspectors were eligible for compensation for travel time to the first inspection site of each work day. Singh v. City of New York, 2005 U.S. Dist. LEXIS 30123, at *21-22 (S.D.N.Y. Nov. 29, 2005). While the inspectors argued the time was compensable because they were required to transport brief cases, the court disagreed and found the time was not compensable. Drawing upon the Supreme Court's ruling in Tum, the court reasoned that even if carrying the brief cases was necessary to perform the job, "that fact without more does not make [carrying a brief case] 'integral and indispensable' to the principal activity." Id.; See also Dooley, 307 F. Supp. at 247 (transportation of light equipment from homes to work does not constitute a principal activity).

IV. CONCLUSION AND TIPS FOR COMPLIANCE

Determining exactly which of your employees' activities are compensable under the FLSA is a fact-specific, often hair-splitting analysis. Take time to review your employees' workday in light of the guidelines set forth above. Where questions arise, consult an attorney. A little time and energy spent assessing your employees' work day now could save you significant expense and hassle in the future.