

A Day's Pay for a Day's Work—But How Long Is the Workday?

Lyle Denniston

The U.S. Supreme Court has agreed to hear two workplace-law cases that may place new financial burdens on companies in a range of industries.

Under federal labor law, America's hourly wage workers have a legal right to be paid for all job activities that occur during the workday. But that is not necessarily an easy thing to calculate: It depends on when a workday actually starts, and when it ends. Does the day start and stop repeatedly as a worker moves from one activity to the next? Is everything but a lunch period or a coffee break to be counted as paid time? Does the workday, in the words of the Labor Department, run "from whistle to whistle"?

Those questions, involving the meaning of the federal Portal to Portal Act, have split the lower federal courts, and now the U.S. Supreme Court is stepping in to give a clear-cut answer.

For the Court, the issues arise in two cases—one from the poultry-processing industry, the other from beef slaughterhouses.

But the answers the Court will give may affect virtually any industry where workers do not spend their whole day on the job at actual work stations but engage in other work-related activity that their job entails—including such

mundane things as waiting and walking. In fact, the two cases before

the Court focus explicitly on waiting and walking: waiting to pick up and drop off required tools, safety gear, or protective clothing, and walking to or from a locker room and to or from the work floor or assembly line.

That raises an even larger issue for the Court to tackle, as it's spelled out in one of the appeals: "It would be impossible to aggregate the amount of time spent per workday if the 'workday' itself were not first defined."

The Court's Decision May Affect a Variety of Industries

The outcome, the Court has been told, is likely to affect workers and their employers in not only the poultry and meat processing industries, but in pharmaceutical and medical equipment

plants, oil and gas processing facilities, biotechnology industries and manufacturing factories of many kinds. "These questions directly and substantially affect the compensation of hundreds of thousands, and perhaps millions, of hourly wage workers," according to the workers' appeal in the poultry case.

Many of them have low incomes, so the amount of time at issue can add up to a significant difference in their paychecks. In the poultry case, the workers estimate that they are being denied pay for between 20 and 37 minutes of walking and waiting time per day—in other words, they are working for free that much additional time.

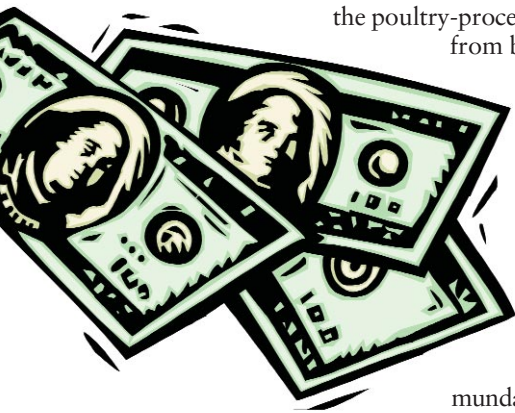
For employers, the prospect of added wage outlays raises the prospect of losing out to competitors, here or abroad. Industry groups have told the Court that the dispute raises the prospect of "large and unforeseen liabilities," affecting not only the private sector but public employers as well. They fear, for example, that workers who don a uniform or other special clothing at home would try to claim compensation for their commuting time to work.

The Cases Reflect the Evolution of Workplace Laws

This controversy arises because of varying interpretations of the Portal to Portal Act's original language in 1947, a 1949 amendment to that Act and a 1956 Supreme Court decision. The Act was passed originally to narrow employers' obligations under the Fair Labor Standards Act of 1938. The FLSA requires employers to pay their employees for each hour they work, at least at minimum wage rates, and to pay them time-and-a-half for more than 40 hours a week.

Reacting to an earlier Supreme Court decision that assured workers of paid time for walking from the time clock to the work station and back, and for putting on and taking off garments and preparing equipment, Congress in 1947 passed the Portal to Portal Act. It specified that the FLSA did not require employers to pay for walking, riding, or traveling to the place of their required "principal activity" nor for activities before or after that "principal activity." In 1949, Congress added an amendment saying that employers could agree, in labor union contracts, to pay workers for clothes-changing time at the start and end of their shifts.

In a 1956 decision, in the case of *Steiner v. Mitchell*, the Court declared that "principal activity" under the Act means anything on the job that is "an integral or indispensable part" of the principal tasks that a worker was hired to do. Thus,



changing clothes and showering before or after the shift had to be compensated. Interpreting that decision's scope is what has now divided the lower federal courts—especially as it applies to waiting and walking time.

Now, Waiting Time for Court Watching Begins

The poultry processing workers' case now before the Court, *Tum v. Barber Foods*, involves present and former employees who worked at a Barber Foods plant in Portland, Maine, turning bulk chicken breast meat into nuggets, fingers, and stuffed entrees. Under government and local plant rules, they

must wear special protective clothing and use special equipment, which they must pick up at supply cages or on hall racks. Workers show up at the plant 15 to 30 minutes early to get ready for the day. Their waiting time to get the gear and the time it takes to walk to the work floor is the time in dispute on their wages. They lost in the federal appeals court based in Boston, which barred compensation for the waiting and walking time.

The other case, *IBP v. Alvarez*, stemmed from a dispute by workers employed by Tyson Fresh Meats, Inc. (formerly known as IBP, Inc.), the world's largest beef- and pork-packing company and yielded the opposite result, at least for walking time. These particular workers had jobs

Staff Training Yields Significant Business Results

Organizations that invest in a well-trained workforce are more likely to have productive, motivated employees and more loyal customers, according to international training and consulting firm AchieveGlobal.

"Organizations typically invest in training to address a gap between their goals and what their staff is capable of achieving," says Sharon Daniels, AchieveGlobal president and CEO. "It takes a good deal more than technology to fulfill significant strategies such as achieving customer intimacy. High-performing people are necessary to accomplish these goals, and training gives them the tools to become and remain challenged and productive."

Daniels cites a number of benefits attributable to corporate training initiatives:

- Aiding in recruitment and retention: The Gallup Organization has reported that employer-sponsored training is a major attraction for prospective employees. People "go where they can grow" and stay as long as they continue to grow.
- Serving as a mutual benefit for employer and employee: Training benefits both the organization and the individual. Employees who have received training gain skills they can apply within the organization to improve its competitive edge. In turn, they position themselves for promotion within the organization as well as for new opportunities outside the organization.
- Motivating employees: Training can be particularly valuable in maintaining a higher level of employee motivation during periods of uncertainty such as downsizing or pre-merger, by confirming that the organization is committed to investing in them.
- Promoting a consistent culture: Training can be a cost-effective way to establish a common language and focus.
- Attracting and retaining customers: Training provides the tools and strategies required to provide positive customer experiences and interactions—the elements that build customer loyalty.
- Maintaining a competitive edge: Customers want more than product knowledge. Today's customers demand service skills,

understanding of their needs and the ability to meet these needs. These skills sets can't be developed through experience alone.

- Maintaining commitment and innovation: The more skilled and efficient employees become, the more likely they are to be committed to organizational objectives and interested in innovating to achieve greater organizational effectiveness. Unskilled workers seldom look for a better way or suggest innovative improvements.

"Taken together, these benefits result in increased revenue," says Daniels. "Investing in activities such as learning that strengthen customer relationships—whether through attracting new customers or building customer loyalty—will result in a healthier revenue stream."

Daniels notes that organizational attitudes toward training are in a state of flux, with some organizations reducing training budgets because they couldn't identify a direct relationship between training and increased profitability, or couldn't document immediate ROI on training expenditures.

She believes the training industry itself should become more aggressive in providing evidence of the value of training, both anecdotally and, where possible, through quantitative measures.

"Today's organization wants immediate relevancy and value," says Daniels. "They are more likely to train staff to support specific initiatives such as increased customer loyalty and they often demand customized training to focus on immediate needs." She adds

that a society accustomed to customization in everything from computers to hamburgers expects their training to be "just in time" and relevant to their specific needs.

Daniels concludes that successful corporate training demonstrates four elements: frequency of opportunities to apply what has been learned, consistent observation of how behaviors and performance have improved, reinforcement of new skills by leaders and managers, and the ability to connect application of learning to corporate strategies and business outcomes.

"Coupled with the proper strategies, these elements will yield the training benefits every organization wants and needs," she says. ■

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at a “kill and processing plant” in Pasco, Washington. They must wear protective gear and use special tools which they must clean up at the end of the day. The federal appeals court based in San Francisco, in the only part of the case now at issue before the Supreme Court, ruled that the workers were entitled to pay for walking between the locker room and stations in the slaughtering or processing sections of the plant.

The two sides in the controversy—workers and employers—are totally at odds, but they emphatically agree on one thing: the Supreme Court is the place to get the dispute settled. The Labor Department, too, agrees on that, and is expected to take the workers’ side. Congress could act, but it has shown no inclination to get involved. A Supreme Court decision is expected in the term that starts in October.

Lyle Denniston is a veteran U.S. Supreme Court reporter, having covered the court for 46 years. This article originally appeared in Workforce Insights, the online HR resource center of Veritude and is reprinted with permission. Veritude is a leading provider of strategic human resources—the talent, technology and tactics that growing firms need to anticipate and adapt to changes in the workplace. Headquartered in Boston, Massachusetts, Veritude is a wholly owned subsidiary of Fidelity Investments and is part of Fidelity’s leadership in outsourced HR services. For other HR articles, research and expert analysis, please visit veritude.com or call 1-800-597-5537. ■

Avoiding the Baby-Boom Bust; Survey Finds Majority of Businesses Concerned About Losing Employees to Retirement

As the number of workers nearing retirement grows, companies have begun bracing for their departure, a new survey suggests. A majority (55 percent) of executives polled recently said their companies are concerned about losing key staff to retirement in the next five to 10 years. An even greater percentage, 78 percent, said their firms are taking steps to compensate for the loss of baby-boom-age employees.

The survey was developed by Robert Half International Inc., the world’s first and largest staffing service specializing in accounting, finance and information technology. It was conducted by an independent research firm and includes responses from 150 executives with the nation’s 1,000 largest companies.



Executives were asked, “How concerned is your company about losing key workers to retirement in the next five to 10 years?” Their responses:

Very concerned	15%
Somewhat concerned	40%
Not very concerned	34%
Not at all concerned	11%
.....	100%

Respondents were also asked, “What steps, if any, is your firm taking to compensate for the loss of baby-boom-age workers to retirement?” Of the 78 percent of executives who said their organizations are taking steps in this area, their responses included*:

■ Implementing/enhancing succession-planning programs	59%
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- Providing employees training/professional development53%
 - Increasing employee recruiting and retention efforts45%
 - Implementing or enhancing mentoring programs35%
 - Inviting retirees/future retirees to be consultants/trainers25%
 - Increasing compensation and bonuses15%
- (*Multiple answers were permitted.)

“Coming demographic shifts point to changes in the makeup of the U.S. workforce: As members of the baby-boom generation retire, shortages of skilled workers will likely start emerging,” said Max Messmer, chairman and CEO of Robert Half International Inc. and author of *Human Resources Kit For Dummies*® (John Wiley & Sons, Inc.). “Tenured employees take with them valuable experience, industry contacts and knowledge of best practices that are difficult to replace.”

Messmer pointed out that managers should take steps now to groom their companies’ future leaders by instituting succession plans and providing professional development opportunities to high-potential employees. He added that organizations should also look for ways to keep those nearing retirement involved through consulting, mentoring or training roles. ■

