



DEC 3 1997

Dear

This responds to your respective requests for an opinion concerning the application of section 3(o) of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. 203(o), to employees in the meat packing industry. According to your letter, the employees in question perform the following preliminary and postliminary activities: sharpening knives, waiting in line at wash stations, cleaning equipment, and putting on and taking off required safety gear. You specifically ask whether section 3(o) allows for the exclusion of any of these activities from hours worked pursuant to the express terms or by custom or practice under a collective bargaining agreement.

Section 3(o) of the FLSA states as follows:

Hours worked. -- In determining for the purposes of sections 6 and 7 the hours for which an employee is employed, there shall be excluded any time spent in changing clothes or washing at the beginning or end of each workday which was excluded from measured working time during the week involved by the express terms or by custom or practice under a bona fide collective-bargaining agreement applicable to the particular employee.

29 U.S.C. 203(o) (emphasis added). Since section 3(o) provides an exemption from the broad, remedial provisions of the FLSA, it must be read narrowly. See Arnold v. Ben Kanowsky, Inc., 361 U.S. 388, 392 (1960).

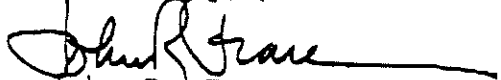
The putting on, taking off, and washing of protective safety equipment are compensable activities under the FLSA if they are integral to an employee's principal activities, regardless of the fact that they may be performed either before or after the employee's regular work shift. See Reich v. IBP, Inc., 38 F.3d 1123 (10th Cir. 1994) (where court concluded that the time spent by employees in putting on, taking off, and washing protective safety equipment that is unique to the meat packing industry -- e.g., a mesh apron, a plastic belly guard, mesh sleeves or plastic arm guards, wrist wraps, mesh gloves, rubber gloves, rubber boots, a chain belt, a weight belt, a scabbard, and shin guards -- was compensable). See generally 29 C.F.R. 790.8(b) and (c). It is our view that by its very terms section 3(o) does not apply to the putting on, taking off, and washing of protective safety equipment, and, therefore, time spent on these otherwise compensable activities cannot be excluded from hours worked pursuant to the express terms or the custom or practice under a collective bargaining agreement.

The plain meaning of "clothes" in section 3(o) does not encompass protective safety equipment; common usage dictates that "clothes" refer to apparel, not to protective safety equipment which is generally worn over such apparel and may be cumbersome in nature. In regard to the meaning of "washing," the legislative history specifically states that the term refers only to washing oneself. The conference agreement limited the section 3(o) exemption "to time spent by the employee in changing clothes and cleaning his person at the beginning or at the end of each workday." See H.R. Conf. Rep. No. 1453 (1949), reprinted in 1949 U.S.C.C.A.N. 2251, 2255 (emphasis added). See also 95 Cong. Rec. 14,875 (1949) (speaking of the conference agreement as limiting the application of section 3(o) "to time spent in changing clothes or washing (including bathing) at the beginning or end of each workday") (emphasis added); 29 C.F.R. 790.7(g) (discussing preliminary and postliminary activities such as "washing up or showering," which, under the Portal-to-Portal Act, would not generally be considered to be compensable unless deemed to be an integral part of an employee's principal activity) (emphasis added). Thus, section 3(o) cannot be read so broadly as to include the cleaning of protective safety equipment.

Therefore, the phrase "changing clothes or washing" in section 3(o) does not include the putting on, taking off, or washing of that protective safety equipment utilized in the meat packing industry which is integral to the performance of an employee's principal activity. Moreover, the phrase clearly does not encompass the sharpening of knives.

We trust that the above is responsive to your individual inquiries.

Sincerely,

A handwritten signature in cursive script, appearing to read "John R. Fraser", with a long horizontal line extending to the right.

John R. Fraser
Acting Administrator