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WAGE AND HOUR

Expansive View of Compensable Time Under PMWA Likely to Drive More Class Actions

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Special to the Legal

On July 21, the Pennsylvania Supreme Court issued a highly anticipated decision in *Heimbach v. Amazon.com,* answering two questions certified from the U.S. Court of Appeals for the Sixth Circuit:

• Is time spent by a nonexempt employee on an employer's premises waiting to undergo, and undergoing, mandatory security screening, compensable time under the Pennsylvania Minimum Wage Act (PMWA)?

• Does the de minimis doctrine apply to bar claims for negligible or insignificant amounts of time worked under the PMWA?

The court answered yes to the former and no to the latter, ultimately deciding that time spent on an employer's premises undergoing mandatory security screenings is compensable time under the PMWA and declining to apply the de minimis doctrine to the PMWA. This decision is the latest in a line of cases interpreting the PMWA more expansively than the federal Fair Labor Standards Act (FLSA), which already is leading to the filing of PMWA putative class action lawsuits.


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HISTORY OF THE 'HEIMBACH' CASE

The plaintiffs in *Heimbach* worked at a large Amazon warehouse in Pennsylvania and filed a class action lawsuit in 2013 alleging that they were owed wages for time spent undergoing mandatory security screenings. The employees' duties included receiving deliveries, transporting merchandise, picking up merchandise from storage locations and processing merchandise for shipping. After clocking out at the end of their shifts, the employees were required to undergo mandatory security screenings where they would have to go through metal detectors and have their bags searched. The employees were not compensated for the time they were required to wait in line for and undergo the security screenings.

After the *Heimbach* case was filed in the Philadelphia Court of Common Pleas, it was removed to federal court and subsequently consolidated with similar class actions in the U.S. District Court for the Western District of Kentucky. While the case was proceeding in the Western District of Kentucky, the U.S. Supreme Court issued its 2014 decision in *Integrity Staffing Solutions v. Busk*, interpreting compensable time under the FLSA, as amended by the Portal-to-Portal Act (PTPA). In *Busk*, the Supreme Court held that the time spent by Amazon employees going through the same security screening process as the plaintiffs in *Heimbach* was not compensable under the FLSA because it was activity that was preliminary or postliminary to a worker's

"principal activity," meaning it was not the principal activity for which the warehouse workers were employed to perform and was not integral and indispensable to those "principal activities." The U.S. District Court for the Western District of Kentucky in *Heimbach* decided that the PMWA should be interpreted co-extensively with the FLSA and, in light of *Busk*, held that the Amazon employees' time undergoing security screenings was not compensable under the PMWA. The Amazon employees appealed to the U.S. Court of Appeals for the Sixth Circuit and petitioned to have the above-referenced questions certified to the Pennsylvania Supreme Court.

THE PENNSYLVANIA SUPREME COURT'S DECISION

The Pennsylvania Supreme Court ultimately declined to follow *Busk* in interpreting the PMWA. Instead, it looked to its two recent decisions in *Chevalier v. General Nutrition Centers*, 220 A.3d 1038, 1055 (Pa. 2019), *and Bayada Nurses v. Department of Labor & Indus*try, 607 Pa. 527, 8 A.3d 866 (Pa. 2010), where the court did not interpret the PMWA co-extensively with the FLSA. Instead, in *Bayada* and *Chevalier,* the Supreme Court reasoned that, "the FLSA, by its own terms, specifically permits states 'to enact more beneficial wage-and-hour laws' than provided by the FLSA" and "thus, 'establishes only a national floor under which wage protections cannot drop, but more generous protections provided by a state are not precluded.'" See *Heimbach v. Amazon.com (In re Amazon.com, Fulfillment Center Fair Labor Standards Act (FLSA) & Wage & Hour Litigation)*, No. 43 EAP 2019, 2021 Pa. LEXIS 3047, *21 (Pa. 2021) (citing *Bayada*, 8 A.3d at 883, and *Chevalier*, 220 A.3d at 1055). In addition to considering the reasoning in *Bayada* and *Chevalier,* the *Heimbach* court also considered that "Pennsylvania has never statutorily adopted the federal PTPA's specific classification of certain employee activities as being exempt from compensation, even though the PMWA has been amended six times since its initial passage in 1968."

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Instead, in interpreting the scope of "hours worked" under the PMWA, the Supreme Court looked to the text of the PMWA itself, as well as the Pennsylvania's Department of Labor and Industry's regulations which define "hours worked" as including four separate categories of time:

- Time during which an employee is required by the employer to be on the premises of the employer.
- Time during which an employee is required by the employer to be on duty or to be at the prescribed work place.
- Time spent in traveling as part of the duties of the employee during normal working hours.
- Time during which an employee is employed or permitted to work.

The court concluded, therefore, that all time that an employee spends performing any of these four categories of activities constitutes "hours worked" under the PMWA. In applying these principles in *Heimbach*, the Pennsylvania Supreme Court found that, because "Amazon 'requires' employees to remain on their premises—the warehouse—until the security screenings are complete, all time spent by the employees waiting to undergo, and undergoing, the security screenings constitutes 'hours worked' within the meaning of Section 231.1 and, thus, within the meaning of the PMWA."

THE DE MINIMIS DOCTRINE

The Pennsylvania Supreme Court also considered the text of the PMWA and the legislature's intent when deciding whether to apply the de minimis doctrine to the PMWA. The de minimis doctrine was developed in *Anderson v. Mt. Clemens Pottery*, a 1946 U.S. Supreme Court decision. In *Anderson*, the court applied a de minimis exception to the FLSA excluding "insubstantial and insignificant periods of time spent in preliminary activities" from the statutory workweek. See *Anderson v. Mt. Clemens Pottery,* 328 U.S. 680, 693 (1946). After *Anderson,* the U.S. Department of Labor issued interpretive guidance clarifying that "this rule applies only where there are uncertain and indefinite periods of time involved of a few seconds or minutes duration, and where the failure to count such time is due to considerations justified by industrial realities." Thus, the *Heimbach c*ourt concluded that, per the Department

of Labor's guidance, "in order for a period of an employee's time to be considered de minimis, it must truly be a triflingly small interval of an uncertain and indefinite duration, such that it cannot, as a matter of administrative practicality, be precisely recorded by the employer for purposes of compensating the employee."

Despite *Anderson*, in light of a more recent U.S. Supreme Court decision in *Sandifer v. U.S. Steel*, 571 U.S. 220 (2014), in which "the high court signaled its possible discomfort with the continuing application of the de minimis exception to cases brought under the federal FLSA," and in considering the legislative intent and text of the PMWA, the *Heimbach c*ourt ultimately declined to apply the de minimis doctrine to the PMWA's "plain" and "unambiguous" language that requires payment for all hours worked. The court reasoned that "when the text of the PMWA is read consistent with its legislatively articulated purpose" it could "discern no intent on the part of the General Assembly to allow a de minimis exception to the PMWA's irreducible requirements." To the contrary, the court found that the legislature intended that "any portion of the hours worked by an employee does not constitute a mere trifle."

CASES INTERPRETING THE PMWA MORE EXPANSIVELY THAN THE FLSA.

The *Heimbach* decision continues a recent trend in which courts are taking a more expansive view of what constitutes compensable time under the PMWA.

For example, *Chevalier v. General Nutrition Centers* involved a class action lawsuit in which the plaintiffs alleged that the fluctuating work week method (FWW) used to calculate the plaintiffs' overtime "did not satisfy the PMWA's requirement that employees 'shall be paid for overtime not less than one and one-half times the employee's regular rate.'" See *Chevalier*, 220 A.3d at 1040 (citing 43 P.S. Section 333.104(c)). The FWW method is specifically permitted under the FLSA to calculate overtime for nonexempt employees whose hours vary from week to week. To calculate wages under the FWW, the total weekly salary is divided by the number of hours actually worked that week to determine the employee's regular rate of pay. The employer then accounts for the overtime requirement by paying the employee an additional "one-half times" that regular rate by multiplying the number of hours in excess of forty by .5 times the regular rate. The plaintiffs in *Chevalier* argued that this method runs afoul of the PMWA because it does not result in employees being paid for "time and a half" for all hours worked over 40. The *Chevalier c*ourt agreed and held that the PMWA prohibits employers from using the FWW method of calculating overtime pay owed to salaried workers despite the fact that the FWW method is permissible under the FLSA.

Bayada involved a lawsuit that challenged regulations promulgated by the Pennsylvania Department of Labor and Industry that resulted in Pennsylvania law being interpreted more narrowly than the federal FLSA with respect to overtime compensation for home care workers. The court stated that "the FLSA does not supersede state law; Pennsylvania may enact and impose more generous overtime provisions than those contained under the FLSA which are more beneficial to employees; and it is not mandated that state regulation be read identically to, or in pari materia with, the federal regulatory scheme."

IMPACT ON EMPLOYERS WITH PENNSYLVANIA EMPLOYEES

The Supreme Court of Pennsylvania's decision in *Heimbach* underscores the growing divergence of federal and Pennsylvania wage-and-hour laws. In the wake of *Heimbach*, there is likely to be an increase in wage-and-hour class action lawsuits in Pennsylvania, especially against employers that require employees to complete mandatory security screening. Accordingly, employers in Pennsylvania should consider auditing their pay practices to determine compliance with federal and state wage and hour laws. This is especially important given the record number of nonexempt employees who have been and continue to work remotely during the COVID-19 pandemic. •