

Holiday Gift for Oregon Employers: Security Screenings Are Not Compensable Absent Contract, Custom, or Practice

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On December 15, 2022, the Oregon Supreme Court gave employers important clarity regarding compensable work time in [Buero v. Amazon.com Services, Inc.](#)

The plaintiff in *Buero*, a warehouse employee, claimed that Amazon had violated Oregon's wage laws by failing to pay for time spent undergoing mandatory security screenings. Amazon used the screenings to prevent theft of merchandise from the warehouse. The screenings took place at the end of shifts, when the workers exited the secured area of the warehouse. Notably, the warehouse had nine separate screening lanes, five of which were "express," and employees could choose to secure their belongings in lockers outside the secured area of the warehouse (presumably, in order to expedite the time they spent in the security screening process).

Amazon moved for judgment on the pleadings, arguing that the time spent in security screenings was not compensable as a matter of law. A federal district court agreed. The employee appealed to the Ninth Circuit Court of Appeals and asked the court to certify the question of whether Oregon law required compensation for the time spent in the screenings to the Oregon Supreme Court. The Ninth Circuit did so and the Oregon Supreme Court accepted, resulting in the *Buero* opinion.

The Oregon Supreme Court's Analysis

In *Buero*, the Oregon Supreme Court painstakingly described the history of Oregon's statutes and administrative rules governing "work time" and "hours worked," noting that the rules were intended to be consistent with federal law. It ultimately concluded that the "Oregon legislature did not intend to adopt a broad definition of compensable time above and beyond the existing federal understanding and ... Oregon's definition of 'work time' aligns with federal law."

"Therefore," the court stated, "just as under federal law, whether time spent waiting for and undergoing mandatory security screenings on an employer's premises is compensable under Oregon law depends on whether the screenings are either (1) an integral and indispensable part of an employee's principal activities or (2) compensable as a matter of contract, custom, or practice."

California Supreme Court on Compensability of Security Screenings

The *Buero* decision is likely to prove helpful for Oregon employers in staving off the type of class and representative actions that have become commonplace in its neighboring state of California. Indeed, in 2020, the Supreme Court of California

decided that security screenings were compensable under California law, and employers in that state have been paying out millions of dollars in settlements of such claims. The arguments employed by the plaintiff in *Buero* tracked the arguments that had been made in California. Had they been adopted by the Oregon Supreme Court, no doubt bag-check or security-check lawsuits would have swept Oregon, particularly in retail or other theft-prone or security-intensive industries.

Oregon's Wage Laws and the FLSA

Buero may also provide employers with a valuable tool in other cases brought by plaintiffs seeking to interpret Oregon's wage statutes as somehow divergent from federal law. The Oregon Supreme Court made very clear that Oregon's legislature intended its statutes to be interpreted consistently with the federal Fair Labor Standards Act (FLSA) (as amended by the Portal-to-Portal Act). It repeatedly underscored that where Oregon lawmakers meant to depart from the FLSA, they had clearly stated their intent. The Oregon Supreme Court recognized that it was a "policy question" as to whether time spent in mandatory security screenings ought to be paid, and it noted that the employee could "bring the issue to the legislature's attention." Accordingly, employers may see an initiative to adopt a broader definition of hours worked that would include time spent in security screenings.

Key Takeaways

The *Buero* holding provides at least two instructive points that Oregon employers may find useful:

- First, employers may want to consider whether they require employees to undergo any preparatory or concluding activities that are arguably integral and indispensable to the employees' principal activities. While the security screenings in *Buero* were deemed not to be compensable, it is possible that an employer may have workers whose preparatory or concluding activities are found to be compensable.
- Second, because "custom" can be grounds for seeking compensation, employers may want to distinguish the activities for which payment is deemed to be customary from activities that are not compensable. Employers that utilize robust security screening may want to make clear in their handbooks or policies that security screenings are not considered compensable and will not be paid.