

## **Third Circuit Reverses and Remands Donning and Doffing Dispute for Trial, Providing New Framework for the “Integral and Indispensable” Test**

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On August 16, 2023, a [unanimous three-judge panel of the Third Circuit](#) vacated and remanded a decision from the Middle District of Pennsylvania ruling that the time spent by oil-rig workers changing in and out of their protective gear was not compensable.

Plaintiffs Rodney Tyger, Shawn Wadsworth brought a Fair Labor Standards Act collective action against Defendants Precision Drilling Corp., Precision Drilling Oilfield Services, Inc., and Precision Drilling Company, LP (“Precision”), an oil rig, for failing to pay them for pre-shift donning and post-shift doffing of personal protective equipment and the associated time spent walking from the rig’s changing house to safety-meeting locations. In the absence of a controlling Third Circuit precedent, the district court applied the Second Circuit’s gear-changing test which asked, “whether the gear ... guards against ‘workplace dangers’ that accompany the employee’s principal activities and ‘transcend ordinary risks.’” The district court determined that the risks faced by plaintiffs were “ordinary, hypothetical, or isolated” and that the gear’s protection was “incomplete,” which made the gear “neither integral nor indispensable to oil drilling under the Second Circuit’s test. The district court entered summary judgment in favor of Precision and plaintiffs appealed.

On appeal, the Third Circuit declined to adopt the Second Circuit’s gear-changing test, and instead provided its own framework for determining when changing gear is “integral and indispensable,” and thus whether the time spent changing gear is compensable. The Third Circuit identified three key factors to consider when determining whether changing gear is integral: 1) location, 2) regulations, and 3) type of clothing and gear.

With respect to location, the Court noted that “whether the changing takes place before or after workers cross the workplace threshold” is a relevant consideration. The Court also noted that this factor does not require that every worker must change onsite, and that the “vast majority” doing so “regularly” “out of practical necessity or in line with industry custom” is enough for the changing to be considered integral. The Court reasoned that “the question is whether workers have a ‘meaningful option’ to change at home.”

For the second key factor, the Court declared that changing is more likely to be integral when the law requires the employees to change on the employer’s premises, and that courts should examine

specific applicable regulations that suggest the gear may be integral. Finally, the Court instructed that courts should consider “what kind of gear is required-by regulation, employers, or the work’s nature,” observing that the more specialized the gear, the more likely it is to be integral. The Court cautioned however, that generic gear may still be integral. The Court determined that safety gear that was selected by the employer in response to the employer’s obligations under the Occupational Safety and Health Act is more likely to be considered integral under the test, even if that gear may be considered “generic.”

The Court also provided a test for determining when changing gear is indispensable, instructing that it does not need to be “strictly necessary,” but “just reasonably so.” The Court declared that an activity is only indispensable “when an employee could not dispense with it without impairing his ability to perform the principal activity safely and effectively.”

The Third Circuit panel observed that its multifactor test mirrored most of the other courts, including the Sixth Circuit, and that the Second Circuit’s focus on whether the protective gear guards against risks that “transcend the ordinary” is “unique.” The Court also rejected Precision and its amicus concern that the decision would require paying “*all* industrial workers for changing into *any* safety gear,” reasoning that the *de minimis* doctrine, would guard against such potential excesses. The *de minimis* doctrine advises that when an activity “concerns only a few seconds or minutes of work beyond the scheduled working hours, such trifles may be disregarded.”

In vacating the district court’s ruling and remanding the matter for trial, the Third Circuit also found that the district court erred in granting summary judgment given several genuine factual disputes, including:

1. How many rig employees changed at work;
2. Is changing at the rig required by the law, by Precision’s rules, or by the nature of the work;
3. Was changing on the rig merely a convenience to Precision;
4. Is it industry custom for rig hands to change onsite;
5. Does it take more than a *de minimis* amount of time for the rig hands to change?

The Third Circuit’s ruling in *Tyger* is significant because it represents a further consolidation among the courts around a less restrictive “integral and indispensable” text in the context of donning and doffing, as the Second Circuit now stands alone with heightened standard.

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