

SPECIAL BULLETIN

June 2, 2009

Maciel and Bamonte Oral Argument

Yesterday the Ninth Circuit heard oral argument on two cases regarding whether police officers should be compensated for donning and doffing their police uniform. These are the first two cases on police officer donning and doffing to be heard by a federal court of appeals. Ninth Circuit Judges Johnnie B. Rawlinson and Ronald M. Gould, and Senior US District Court Judge Lloyd D. George comprised the panel that heard both cases.

The first case argued was Maciel v. City of Los Angeles. Brian Walter of our Los Angeles office argued the Maciel case on behalf of the City of Los Angeles. Greg Hafif argued for Maciel. The trial court in Maciel ruled that a police officer was entitled to compensation for donning and doffing his bulletproof vest and his belt, even if it only took 2 or 3 minutes to don and doff those items. However, the trial court entered judgment in favor of the City on the grounds that Maciel never proved he actually worked uncompensated hours that caused him to exceed the FLSA limits for a police officer (171 hours in a 28 day work period in that case.)

The Ninth Circuit initially focused on a procedural issue regarding whether the City could appeal Judge Lew's rulings on safety gear since the City obtained a judgment in its favor at the trial court. However, the panel's questions also focused on whether police officer donning and doffing is distinct from prior appellate cases on donning and doffing since police officers - unlike employees of meat processors, battery plants and silicon chip plants - are not required to don or doff on their employer's premises.

The second case was Bamonte v. City of Mesa, Arizona. Laurent Badoux argued on behalf of the City of Mesa, and Will Aitchison argued on behalf of the police officers. The Bamonte trial court granted summary judgment in favor of the City of Mesa on the officers' donning and doffing claims. The Ninth Circuit panel asked numerous questions regarding whether donning and doffing of a police uniform is really compensable work when it can be performed off of the premises of the employer. Judge Rawlinson noted that there may be drastic differences between employees in the time it takes them to don or doff their gear and that the Portal to Portal Act of 1947 was intended by Congress to reign in the liability of employers for activities performed in preparation for work. The panel also focused on whether it should give deference to US Department of Labor interpretations of the FLSA regarding donning and doffing. Finally, the panel questioned whether donning and doffing is different from other activities that courts have found to be compensable if they are performed at home, such as caring for a police dog.

Many police union attorneys and representatives were in attendance. The audio files of the June 1, 2009 oral arguments in the Maciel and Bamonte cases are now available on the 9th Circuit's website, at <http://www.ca9.uscourts.gov/media/>. A decision from the Ninth Circuit is expected within the next few months, and we will advise you as soon as a decision is issued.

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