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Ninth Circuit Holds That Time Spent Booting Up Computers is Compensable

OCTOBER 27, 2022 Written by Kathryn J. Trent

On October 24, 2022, the Ninth Circuit Court of Appeals issued its opinion in *Cariene Cadena et al. v. Customer Connexx LLC et al.* (Case No. 21-16522), holding that the time employees spend booting up their computers is compensable under the Fair Labor Standards Act ("FLSA"), as amended by the Portal-to-Portal Act. The opinion will have a significant impact on employers' ability to win summary judgment on FLSA claims pursued by employees whose time spent booting up their computers is intertwined with the performance of their job responsibilities. The *Customer Connexx LLC* decision overrules a Nevada district court's 2021 decision granting Customer Connexx LLC summary judgment on the workers' overtime suit, finding that the time spent booting up computers was not compensable.

Under the Portal-to-Portal Act, which amended the FLSA, employers do not owe pay for time workers spend traveling to and from the place of principal work activities or for time they spend on certain preliminary or postliminary activities.

In *Customer Connexx LLC*, a group of call center workers sued alleging that Connexx failed to pay them overtime as required by the FLSA and Nevada law for the time they spend booting up and turning off their computers after they logged into and out of the company's timekeeping system. After certifying a class action, the district court granted Connex summary judgment, finding that the tasks the workers completed before and after they logged out of the company's timekeeping system were not compensable preliminary and postliminary activities because the tasks were not connected to their jobs.

The Ninth Circuit panel disagreed with the district court's ruling, saying the court erred in focusing its reasoning on whether the activities were essential to the workers' jobs and should have instead put emphasis on whether starting the computer led the call center workers to be able to perform their work. The Court concluded that "[t]he employees' duties cannot be performed without turning on and booting up their work computers, and having a functioning computer is necessary before employees can receive calls and schedule appointments." Because the time spent booting up their computers was integral to the employees' job responsibilities, the Court concluded that the time was compensable under the FLSA.

Importantly, the Court clarified in a footnote that its opinion focused on the pre-shift activities, saying that turning the computers off would not be an integral part of the workers' jobs. Additionally, the Court did not address whether the time the employees spent on pre-shift booting up of their computers was de minimus as the district court did not make any factual findings on that issue.

The case now goes back to the Nevada district courts for further determination of the merits of the employees FLSA and Nevada state law claims. We will keep you updated on any further developments in this matter.

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