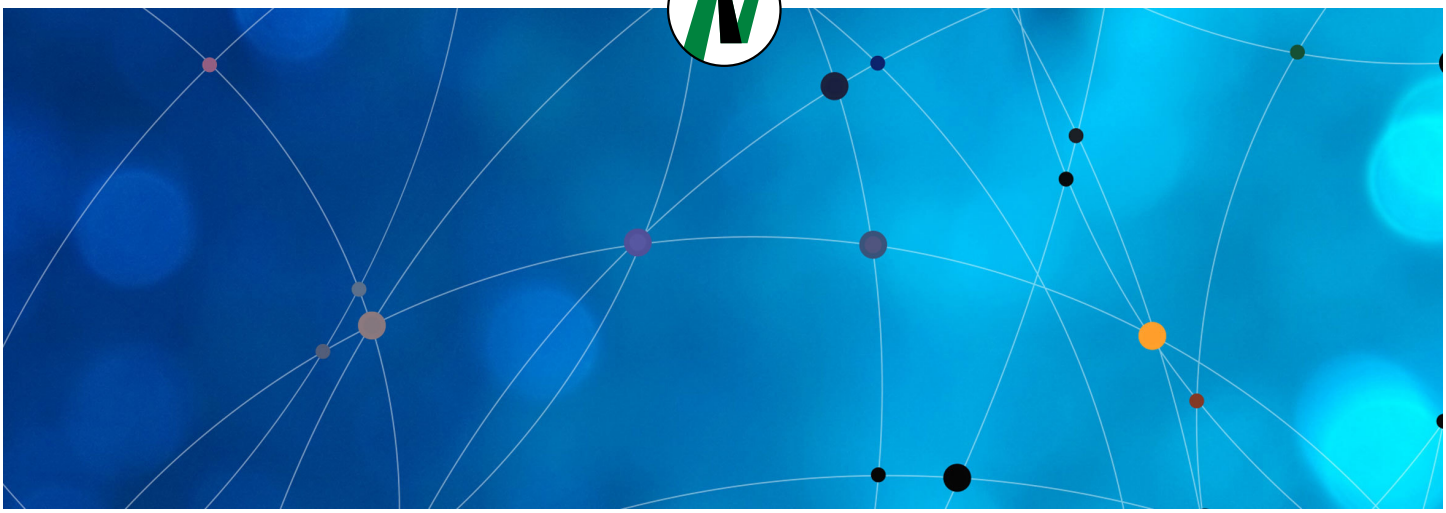

DOL Redefines "Clothes" Under the FLSA

07.16.2010 | By Veronica M. Gray

On June 16, 2010, the Wage and Hour Division of the U.S. Department of Labor (DOL) issued Administrator's Interpretation No. 2010-2, stating that protective gear does not constitute "clothing" for purposes of the exemption under Section 203(o) of the Federal Labor Standards Act ("FLSA"). This is a reversal of the DOL's position taken in two prior opinion letters.

Section 203(o) provides that time spent "changing clothes or washing at the beginning or end of each workday" is excluded from compensable time if the time is excluded pursuant to the express terms or practice of a collective bargaining agreement.

The Section 203(o) exemption does not cover the donning or doffing (putting on/taking off) "protective gear" – whether required by law, employer or nature of the job. Thus, the donning or doffing of protective gear is compensable time.

The Administrator also concluded that even though employers do not have to compensate employees for donning or doffing clothes if they are exempt under Section 203(o), these activities could be principal activities and trigger the beginning or end of the workday, resulting in compensable time. Thus, any time that the employees spend walking or waiting after donning or before doffing these clothes could be compensable time.

What This Means to Employers

Both federal and state law require that employees be paid for all hours worked. Because many jobs require employees to wear uniforms/protective gear, whether or not a collective bargaining agreement is involved, employers should review their practices and policies as to whether workers should be compensated for time spent "donning and doffing." Because the Administrator did not provide a bright line test for establishing what actually constitutes "clothing" versus "protective gear," this will be left up to the courts to decide. However, employers should take a common sense approach in addressing this issue.