INSIGHTS + NEWS

Danielle Lederman and Benjamin Hinks Write "East Penn Verdict Is An FLSA Cautionary Tale For Employers" for Law360

BY BENJAMIN J. HINKS AND DANIELLE JUREMA LEDERMAN • JUNE 16, 2023

A federal jury returned a record $22 million verdict last month for violations of the Fair Labor Standards Act (FLSA) in *Su v. East Penn Manufacturing Co. Inc.* The case, which was brought in the U.S. District Court for the Eastern District of Pennsylvania by the U.S. Department of Labor (DOL), sought unpaid overtime wages for more than 7,500 employees who worked at East Penn Manufacturing Co. Inc. (East Penn), one of the world's largest battery manufacturers.

The DOL asserted claims that East Penn did not pay its employees for the time they spent changing in and out of uniforms and protective gear, and the time they spent showering – protective measures that were undertaken to reduce the exposure to workplaces hazards. While the donning and doffing concept is not a new rule under the FLSA, it's an area where even sophisticated employers can struggle with the nuances of wage and hour law.

In their *Law360* article, "East Penn Verdict Is An FLSA Cautionary Tale For Employers," Danielle Lederman and Benjamin Hinks discuss the case and the numerous learning opportunities for employers, including being wary of applying "reasonable time policies" for donning and doffing, the consequences of failing to keep complete records and the payment of liquidated damages under the FLSA. Here is an excerpt:

> **Employers Should be Wary of Applying "Reasonable Time" Policies for Donning and Doffing**
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> Importantly, East Penn did not dispute that the time spent by its workers donning, doffing and showering on site was compensable.
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> Instead, East Penn argued in favor of its policy that allocated a set 15 minutes of compensable time for these tasks, which it deemed to be a reasonable amount of time. Specifically, in lieu of tracking and paying employees for the actual amount of time they spent performing these tasks, East Penn granted employees a five-minute grace period at the beginning of their shifts to don uniforms and equipment, and 10 minutes at the end of their shifts for doffing and showering.
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> The DOL argued that, as a matter of law, East Penn was required to record the time it took employees to don and doff their gear and shower and pay its uniformed employees for that time.

Continue reading the *Law360* article "East Penn Verdict Is An FLSA Cautionary Tale For Employers."

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