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LABOR AND EMPLOYMENT NOTES
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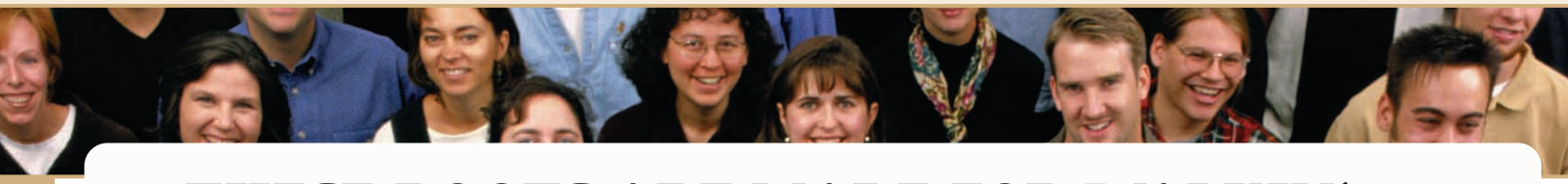

THESE BOOTS ARE MADE FOR WALKIN'. . .

Sure, but is walking time compensable under the Fair Labor Standards Act?

The Portal to Portal Act excludes from the Fair Labor Standards Act's minimum wage and overtime requirements: (1) time spent walking, riding, or traveling to and from the actual place where an employee performs his principal workday activities; and (2) time spent on activities that are either before or after the employee's principal workday activities. Therefore, ordinary work commutes are not compensable. But what about other walking or travel periods?

In *IBP, Inc. v. Alvarez*, 546 U.S. ____ (2005), the United States Supreme Court addressed the compensability of "walking time" and the compensability of time spent donning and doffing personal protective equipment. The Court held that as soon as the employee donned personal protective clothing or equipment, his workday had begun. The Court determined that the employee's "workday" had begun because the donning of personal protective equipment was an "integral and indispensable" part of his work. In addition, from that point forward, during a continuous workday, the employee's walking time to the actual job site or from job station to job station was also compensable. The work day continued and did not conclude until the employee had completed his workday by doffing the personal protective equipment. Thus, time spent donning personal protective equipment, walking to the job site after donning the personal protective equipment, and time spent doffing or waiting to doff the personal protective equipment at the end of the day was all compensable. However, time spent initially walking to a locker room prior to donning personal protective equipment or time spent waiting in line to be issued personal protective equipment is generally not compensable. The Court reasoned that these activities were too far removed from an employee's principal activity and qualified as preliminary activities. Thus, in cases where wearing personal protective equipment is part and parcel of the employee's work, an employee's workday begins as soon as he dons the equipment and does not conclude until he removes the equipment for the day.

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DO YOU FACE A CHALLENGE OF OUR MODERN ERA?

Employers face many challenges in our modern era. One challenge relates to how employers covered by Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq. ("Title VII") deal with the issue of religion.

Title VII, of course, states in part that it "shall be an unlawful employment practice for an employer –

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's . . . religion . . .."

Some employers fail to remember, however, that "religion" is defined by Title VII in the following manner:

> (j) The term "religion" includes all aspects of religious observances and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's religious observance or practice without undue hardship on the conduct of the employer's business."

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