

Law

Judge rules for chicken-plant workers

STEVE LASH
Daily Record Legal Affairs Writer
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A poultry plant operator must pay its employees for the time spent putting on and taking off protective gear, a federal judge has ruled.

Judge Andre M. Davis, of the U.S. District Court in Baltimore, declined to find that Mountaire Farms Inc. had willfully violated federal labor laws or acted in bad faith; however, he rejected the Arkansas-based company's claim that donning and doffing equipment is done on the workers' time, not its dime.

Davis said the company's position is contradicted by government regulations and its own policy, which require poultry plant workers to wear personal protective equipment such as smocks, hairnets and steel-toed rubber boots.

"First, donning and doffing is necessary to the principal work of chicken processing," Davis wrote. "Donning and doffing the required PPE are paramount to complying with federal regulations as well as producing safe products. Indeed, donning and doffing is so important ... that employees are subject to discipline or termination for failing to comply with donning requirements."

Davis said compensation is owed to workers at Mountaire's Millsboro, Del., plant under the federal Fair Labor Standards Act.

The back-pay claims, filed by about 280 workers, date to 2004, said C. Christopher Brown, the workers' lawyer.

Davis also rejected Mountaire's claims that the workers' damages, if any, would be insignificant.

Assuming each employee spent about 15 minutes daily donning and doffing PPE, at a wage of \$10 per hour, the damages would amount to \$625 per worker annually or \$175,000 for the 280 employees. Multiplying that by the five years since 2004 would yield potential liability of about \$875,000.

Davis, however, did not set a damages award, leaving that for a hearing at which attorneys for Mountaire and the workers will present further evidence of the time spent donning and doffing.

"It's going to be hard to know what the bottom line is until we take that next step," said Brown, of Brown Goldstein & Levy LLP in Baltimore.

The Millsboro litigation is part of an action filed by about 430 mostly non-English-speaking Latino employees, who allege Mountaire failed to credit donning and doffing time at its Millsboro and Selbyville, Del., plants. Davis ruled in June that 150 Selbyville workers, who are represented by two unions, could proceed with their similar claim.

Though most of the Millsboro workers live in Delaware, Brown said he brought suit in Maryland because he is

WHAT THE COURT HELD

Case: Perez, et al. v. Mountaire Farms Inc., et al., Civ. No. AMD 06-121. Reported. Opinion by Davis, J. April 17, 2008.

Issue: Does federal law require that poultry farm workers be compensated for time donning and doffing protective equipment.

familiar with the Baltimore court. The court has jurisdiction because Mountaire has a hatchery in Queen Anne.

"We know the court system here pretty well," Brown said.

Mountaire's attorney, James L. Hughes, said he will seek review by the 4th U.S. Circuit Court of Appeals.

"There will definitely be an appeal on the merits," said Hughes, of Wimberly, Lawson, Steckel, Schneider & Stine P.C. in Atlanta. "We would expect to appeal the entire decision."

Holding: Yes; the donning and doffing of safety equipment, required under federal regulations, is part of the workday.

Counsel: C. Christopher Brown for plaintiffs; James L. Hughes for defendants.

[**RecordFax: #9-0417-40 \(48 pages\)**](#)

Reliance on counsel

In a win for Mountaire, Davis rejected the workers' argument that the company willfully violated FLSA and acted in bad faith by not paying them for donning-and-doffing time.

A willfulness finding would have extended the workers' FLSA allegations back to 2003, while a bad-faith ruling would have entitled the workers to twice the back-pay award.

Davis ruled Mountaire relied in good faith on legal advice telling the company its payment policies complied with the law.

He also noted the law is in flux regarding whether donning and doffing must be compensated. Even after a Supreme Court ruling in 2005, federal appeals courts are split on whether workers must be paid for time spent donning and doffing, Davis added.

In contrast to Davis, Senior U.S. District Judge Marvin J. Garbis, also of the Baltimore court, dismissed a class-action donning-and-doffing claim in September. Garbis agreed with chicken company Allen Family Foods Inc. of Seaford, Del., that it is not legally required to pay for donning-and-doffing time.