

## THOUGHT LEADERSHIP

LEGAL UPDATES

PUBLISHED: OCTOBER 28, 2022

### Services

Employment Class &  
Collective Actions  
Labor & Employment

### Professionals

JOSEF S. GLYNIAS  
ST. LOUIS:  
314.345.6208  
JOE.GLYNIAS@  
HUSCHBLACKWELL.COM

SARAH VINCENT  
KANSAS CITY:  
816.983.8000  
SARAH.VINCENT@  
HUSCHBLACKWELL.COM

ANDREW J. WEISSLER  
KANSAS CITY:  
816.983.8123  
AJ.WEISSLER@  
HUSCHBLACKWELL.COM

SCOTT D. MEYERS  
ST. LOUIS:  
314.345.6274  
SCOTT.MEYERS@  
HUSCHBLACKWELL.COM

# Ninth Circuit Rules Computer Start-Up Time Is Compensable

Earlier this week, the Ninth Circuit held that computer start-up time is compensable under the Fair Labor Standards Act (“FLSA”) where computer usage is an “integral and indispensable” part of an employee’s duties. More specifically, the case involved Connexx, a call center that provides customer service and scheduling for an appliance recycling business. Connexx’s employees use employer-provided computers for all phone calls, and, according to the lawsuit, these computers take 6.8 and 12.1 minutes to start up. Employees are not able to access timekeeping software to track time worked until the computer is fully booted.

Previously, the district court had granted summary judgment for Connexx. It concluded that time spent waiting for the timekeeping software to open and logging into timekeeping software was not compensable because it was akin to time spent waiting in a line to clock in, which is not compensable under federal law.

But the Ninth Circuit took a much broader approach. Stating that tethering the analysis to the timekeeping software was too restrictive, the panel held the appropriate inquiry turns on the beginning and end of “integral and indispensable duties” for which the employee was hired.

The Ninth Circuit then concluded that—because Connexx is a call center that exclusively uses computers for its calls—an employee’s computer use is both “integral and indispensable” and booting it up is therefore compensable.

Notably, the panel offered no opinion on whether this outcome would occur under remote work conditions or with personal computers. Instead, the court limited its holding to employees who work at a central work site.

### Key takeaways

The case is an important reminder that an employee must be compensated for work between the beginning and the end of the “integral and indispensable” duties for which they were employed. Activities before the first and after the last “integral and indispensable” task are not compensable.

The Ninth Circuit provided guideposts for this analysis, using prior cases as examples:

<b>Compensable Time</b>	<b>Not Compensable Time</b>
Changing clothes at the beginning and end of shifts where battery factory employees were exposed to toxic dust	
Pre-shift knife sharpening to knifemen who butchered animals at a meatpacking factory	Waiting time prior to donning protective equipment
Lathe operator's oiling, greasing, or cleaning machine and installing new tools	
Garment worker who must distribute clothing to work benches of other employees or get machines ready for operation	Security screening before leaving where employees were employed to retrieve products from shelves and pack them for shipping

Perhaps the Ninth Circuit's conclusion is best understood by *eliminating* the activity in question and determining whether the employee can still perform the job. For instance, if you eliminate security screening from the warehouse workers' day, they would still be able to retrieve products and pack boxes for shipping. Thus, this time is not compensable. But, if you eliminate changing clothes from the battery factory employees' day, they would be unable to work in the factory given the extreme safety hazards. Thus, this time is compensable.

That leaves us with the present case: If you eliminate the computer start-up process, can Connexx employees still perform their customer service and scheduling calls, which occur entirely on Connexx computers? No. Thus, this time is compensable.

Importantly, in reversing and remanding, the Ninth Circuit left it to the district court to determine whether the start-up time is *de minimis* (i.e., negligible) and, therefore, not compensable.

## **What this means to you**

While the Ninth Circuit limited its analysis to employees using employer-provided computers at a central work site, the case flags important considerations for when hourly employees—including remote workers—should be compensated for time spent on starting up and shutting down computers. Should they also be paid for time spent updating the computer? What about if they are doing personal work while the computer is updating or starting up? Is computer usage “integral and indispensable” or just helpful? These questions highlight potential risks to employers who rely on computer usage to conduct their businesses and who are not yet recording and paying for boot up time.

**Contact us**

If you have questions or would like additional information regarding what this decision may mean for your business, please contact Joe Glynias, A.J. Weissler, Scott Meyers, Sarah George or your Husch Blackwell attorney.