

# The Ultimate Backup

A Client News Bulletin

RAINS, LUCIA & WILKINSON LLP

August 1, 2006

## GETTING PAID FOR GETTING DRESSED:

### FLSA DEFINES WORKING TIME TO INCLUDE GETTING IN AND OUT OF SAFETY GEAR

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*Rains, Lucia & Wilkinson Joins with Will Aitchison  
to Require California Police Agencies to Comply with the FLSA*

Peace officers whose job requires them to put on safety gear (such as a bulletproof vest, radio, flashlight, baton, handcuffs and handgun) will substantially benefit from the recent United States Supreme Court decision in *IBP, Inv. v. Alvarez* (2005) 126 S. Ct. 514. In that case, the Court held that the time spent putting on and taking off required protective gear, as well as the time walking from the location where the gear is put on to where the employee reports for duty, is compensable under the Fair Labor Standards Act.

*IBP* provides solid support for the notion that the putting on of safety gear is integral and essential to performing a patrol officer's job and should, therefore, mark the beginning of the compensable work day. That work day then continues until such time as the employee actually removes that clothing at the end of the shift. For peace officers who perform patrol functions, that means the compensable work day no longer begins when the officer appears fully suited-up for briefing.

The Supreme Court's analysis included an examination of whether changing time qualified as a preliminary activity that should be excluded from FLSA coverage under sections 4(a)(1) and (2) of the Portal to Portal

Act. Finding that putting on and taking off safety gear was integral and indispensable to the employee's principal duties, the Court found that the activity was not exempt from compensation requirements. Moreover, the fact that the protective gear was required and that the employee could not perform the job without it was deemed significant by the *IBP* court.

Rains, Lucia & Wilkinson LLP has begun an aggressive campaign for all its law enforcement clients in order to obtain agency compliance with this FLSA requirement, and has already demanded that agencies voluntarily comply or face an immediate FLSA lawsuit. As part of that campaign, RLW is reminding public safety employers that the State of Hawaii just settled an FLSA case for \$30 million dollars which included donning and doffing claims, and that the California Association of Highway Patrol's new collective bargaining agreement includes a 3.5% stipend for off-duty activities such as putting on protective gear and inspecting equipment.

RLW is also pleased to announce that it has entered into an alliance with pre-eminent FLSA attorney **Will Aitchison** to ensure that each of its clients receive full compensation for all necessary work performed.

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**Will Aitchison** is a partner with **Aitchison & Vick**, a multi-state law firm based in the Pacific Northwest that has developed a nationwide litigation practice with extensive expertise in representing employees in Fair Labor Standards Act (FLSA) and state law wage and hour cases.

RLW is proud to be working with Aitchison, who is a 1976 graduate of the Georgetown University Law Center in Washington, D.C., and who has been representing police unions for more than 20 years. Aitchison has handled numerous FLSA lawsuits on behalf of police officers around the country, recovering millions of dollars in damages, and recently settled a large case for public safety employees in the State of Hawaii, which included payment for donning and doffing claims.

Aitchison has written seven books on public safety labor relations issues, including [The Fair Labor Standards Act — A User's Manual](#) and [The Rights of Law Enforcement Officers](#). Aitchison has also taught classes to well over 10,000 police officers nationwide through LRIS (Labor Relations Information System).

For more information on pursuing these FLSA rights, other important rights affecting your employment, as well as for estate planning services and personal injury litigation, please contact the offices of Rains, Lucia & Wilkinson directly.

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This issue of the Ultimate Backup Newsletter does not constitute legal advice and is for information only. Our disclaimer, along with past issues of this Newsletter and other important information, can be found on our website at [www.RLWlaw.com](http://www.RLWlaw.com).

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