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California Supreme Court Holds California Statutes and Wage Orders do not Incorporate FLSA De Minimis Doctrine; Declines to Decide Whether De Minimis Principle May Ever Apply to Wage and Hour Claims

On July 26, 2018, the California Supreme Court issued a long-awaited decision in *Troester v. Starbucks Corporation,* in which it considered the applicability of the de minimis doctrine to claims for unpaid wages under the California Labor Code. The de minimis doctrine is an application of the legal maxim that "the law does not concern itself with trifles," and has been applied in certain circumstances to excuse the payment of wages for small amounts of otherwise compensable time upon a showing that the units of time are administratively difficult to record.

In its decision, the Court held that relevant California statutes and wage orders have not incorporated the de minimis doctrine found in the federal Fair Labor Standards Act (FLSA). It also held that although California has a de minimis rule that is a "background principle of state law," the rule was not applicable to the facts of the case before it. Importantly, the Court limited its decision to the facts at hand and declined to decide whether there are circumstances where compensable time is so minute, or is incurred so irregularly, that it is unreasonable to expect the time to be recorded. The Court thus left open the questions of whether the de minimis principle may ever apply to California wage and hour claims and just how much time may trigger an employer's obligation to record and compensate time worked.

In the case before the Court, Plaintiff Douglas Troester worked for Defendant Starbucks Corporation as a shift supervisor. In the putative class action, the undisputed evidence showed that after clocking out from a shift, Plaintiff's closing tasks required him routinely to work four to 10 additional minutes each day. After clocking out on Starbuck's computer software, Plaintiff was required to perform tasks such as initiating Starbuck's computer software's "close store procedure" on a separate computer terminal in a back office, activating the store alarm, exiting the store, locking the front door, walking coworkers to cars in compliance with Starbucks' policy, and occasionally reopening the store to allow employees to retrieve items they left behind, waiting with employees for their rides to arrive, or bringing in store patio furniture mistakenly left outside. Over the 17-month period of his employment, Plaintiff's unpaid time totaled approximately 12 hours and 50 minutes. At the then-applicable minimum wage of $8 per hour, this unpaid time added up to $102.67, exclusive of any penalties or other remedies. On these facts, the Court concluded that the relevant Industrial Welfare Commission Wage Order and labor code statutes did not permit application of the de minimis rule because the employer required the employee to work "off the clock" for several minutes per shift.

However, the Court declined to prejudge different factual permutations and decide whether a de minimis principle may ever apply to wage and hour claims given the wide range of scenarios in which this issue arises, such as activity that is incidental to noncompensable time (such as commute time), irregular or rarely occurring activity, or activities such as paperwork involving a minute or less of an employee's time.

The Court acknowledged that federal rules permit employers under some circumstances to require employees to work as much as 10 minutes a day without compensation on tasks that are difficult or not feasible to track. *See Anderson v. Mt. Clemens Pottery Co*., 328 U.S. 680, 692 (1946). However, the Court concluded that California's wage and hour statutes or regulations have not adopted the de minimis doctrine found in the federal FLSA and there is no indication in the text or history of the relevant statutes and Industrial Welfare Commission (IWC) wage orders that show an intent to incorporate the federal de minimis rule articulated in *Anderson* supra, *Lindow v. United States*, 738 F.2d 1057, 1063 (9th Cir. 1984), or the federal regulation.

The Court concluded, "[a]n employer that requires its employees to work minutes off the clock on a regular basis or as a regular feature of the job may not evade the obligation to compensate the employee for that time by invoking the de minimis doctrine. . . [A] few extra minutes of work each day can add up." Further, quoting the *Lindow* decision, *supra*, the Court recognized that one of the principal impetuses behind the de minimis doctrine in wage cases is "the practical administrative difficulty of recording small amounts of time for payroll purposes." But, the Court also recognized that employers are in a better position than employees to find solutions to track small amounts of regularly occurring work time, and even when restructuring work or technological fixes are not practical to track all time worked, it may be possible to reasonably estimate work time through surveys, time studies, or a fair rounding policy. As such, the Court declined to adopt a rule that would require the employee to bear the entire burden of any difficulty in recording regularly occurring work time.

An open question that remains after this decision is what constitutes "a few" minutes requiring an employer to compensate employees? The decision also leaves open the possibility that some activities might be so irregular or brief (presumably, less than four minutes based on this decision) that it would be unreasonable to require compensation for that time. Finally, a point in the employer's favor may also arise if recording time at issue would not be feasible. However, employers may wish to take the opportunity to evaluate any regularly occurring off the clock work and determine whether the employer's time keeping system may be engineered to require all work to occur on the clock, embrace technological advances in

time keeping that allow an employer to capture all compensable time, or reasonably estimate uncompensated time of which it is aware.

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