Updates
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California’s High Court Rejects FLSA’s De Minimis Doctrine

The California Supreme Court issued an opinion on July 26, 2018, and found that the federal Fair Labor Standards Act's *de minimis* doctrine does not apply to claims for unpaid wages under the California Labor Code. Federal courts have applied the doctrine in some circumstances to excuse the payment of wages for small amounts of otherwise compensable time upon showing that the bits of time are administratively difficult to record. The California Supreme Court declined to adopt the *de minimis* doctrine under the facts presented.

Background: Plaintiff's Off-the-Clock Tasks

In August 2012, plaintiff Douglas Troester filed a class action on behalf of California Starbucks employees who performed store closing tasks from mid-2009 to October 2010. The plaintiff worked for Starbucks as a shift supervisor; he presented evidence that Starbucks's computer software required him to clock out on every closing shift before initiating the software's "close store procedure" on a separate computer terminal in the back office. The close store procedure transmitted daily sales, profit and loss, and store inventory data to Starbucks's corporate headquarters. After the plaintiff completed this task, he activated the alarm, exited the store and locked the front door. The plaintiff also submitted evidence that he sometimes walked his coworkers to their cars in compliance with Starbucks's policy and occasionally reopened the store to allow employees to retrieve items they left behind, waited with employees for their rides to arrive or brought in store patio furniture mistakenly left outside. These tasks required Troester to work an additional 4 to 10 minutes each day which amount to an approximate total of $102.67 of unpaid wages for hours worked during a 17-month period.

The district court concluded that the *de minimis* doctrine applied and dismissed the complaint. On appeal, the U.S. Court of Appeals for the Ninth Circuit recognized that although the *de minimis* doctrine has long been a part of the Fair Labor Standards Act (FLSA), the California Supreme Court has never addressed whether the doctrine applies to wage claims brought under California law and certified the question for review.

CA Supreme Court: CA Statutes and Regulations Require Compensation for All Hours Worked

In analyzing the *de minimis* doctrine, the California Supreme Court noted that under the FLSA, the doctrine applies to insubstantial or insignificant periods of time beyond scheduled working hours, which cannot as a practical administrative matter be precisely recorded for payroll purposes. The doctrine allows such time to be disregarded because it is *de minimis*. It applies only where there are uncertain and indefinite periods of time of only a few seconds or minutes in duration, and the failure to count such time is due to considerations justified by industrial realities. In determining whether otherwise compensable time is *de minimis* under the FLSA, the Ninth Circuit considers (1) the practical administrative difficulty of recording the additional time; (2) the aggregate amount of compensable time; and (3) the regularity of the additional work.

To determine whether the federal *de minimis* doctrine applies to California wage claims, the court analyzed the text of the governing statutes and regulations. The court noted that in this realm California law is generally more protective than federal law, and the California Labor Code and Wage Orders require that employees be compensated for all hours worked and "[n]othing in the language of the wage orders or Labor Code shows an intent to incorporate the federal *de minimis* rule articulated in federal case law or federal regulations." Although the *de minimis* doctrine appears in the California Enforcement Policies and Interpretations Manual published by the Division of Labor Standards Enforcement (DLSE Manual), the DLSE Manual is not binding.

The court did limit its holding to the question whether the *de minimis* rule is applicable to the facts of the case presented: "In light of the California Wage Order's remedial purpose requiring a liberal construction, its directive

to compensate employees for all time worked, the evident priority it accorded that mandate notwithstanding customary employment arrangements, and its concern with small amounts of time, we conclude that the *de minimis* doctrine has no application under the circumstances presented."

In rejecting the *de minimis* doctrine, the court highlighted that many of the problems in recording employee work time discussed in caselaw 70 years ago, when time was often kept by punching a clock, may now be cured by technological advances that enable employees to track and register their work time via smartphones, tablets or other devices. The court commented that even where it is difficult to keep track of time worked, the employee alone should not bear the burden of that difficulty.

Implications for California Employers

Although the *Troester* holding is limited to the facts presented, the California Supreme Court was clear that the *de minimis* doctrine has not been adopted or incorporated into California statutes and regulations governing wage claims.

In light of this, California employers should review their timekeeping and payroll practices and consult with experienced legal counsel to determine whether this holding has an impact on any of their current employment practices.

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