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California Supreme Court Rejects Federal *de minimis* Doctrine for Unpaid Work Time; Employers Should Carefully Assess Any Unrecorded Work Time

By: James L. Morris and Seth Ort

On July 26, 2018, the California Supreme Court issued its decision in *Troester v. Starbucks Corporation*, a case that considered the question whether the *de minimis* doctrine under the federal Fair Labor Standards Act ("FLSA") applies to claims for unpaid wages under the California Labor Code and Wage Orders.

The FLSA's *de minimis* doctrine holds that in some circumstances, the payment of wages for small amounts of otherwise compensable time may be excused upon a showing that the bits of time are administratively difficult to record. Many employers have assumed the *de minimis* doctrine would be applicable to California wage claims, especially as such claims relate to small tasks undertaken by employees at the beginning and/or end of their shift (outside of normal log-in, log-out times).

The Ruling

The Court's decision requires employers to re-examine any assumptions along these lines. The Court held that: (1) the FLSA's *de minimis* doctrine does not apply to California's wage and hour statutes and regulations; and (2) the *de minimis* doctrine was not applicable to the facts of the case before the Court. However, the Court declined to decide whether *de minimis* principles (which have been recognized in other areas of California law) might ever apply to unpaid wages claims in California. Instead, the Court restricted its holding to the (difficult) facts presented in the *Starbucks* case.

Plaintiff Troester had filed a class action claim against Starbucks on behalf of non-managerial employees who performed "closing" work. Troester claimed he worked 4 to 10 additional minutes every day, after clocking out. This additional time included submitting final reports, activating an alarm, locking the door, walking coworkers to their cars, and occasionally re-admitting employees to the store to retrieve belongings. In the 17-month period of his employment, Troester's unpaid time totaled approximately 12 hours and 50 minutes.

A federal District Court ruled, on the basis of the tasks completed by Troester, that such time was *de minimis*, and dismissed his claim. On appeal, the U.S. Ninth Circuit Court of Appeals referred the case to the California Supreme Court to give its views on whether the federal *de minimis* standard applied to California state law claims. After analyzing relevant California wage and hour statutes, regulations, and authority, the California Supreme Court held that California law had not adopted the FLSA's *de minimis* doctrine.

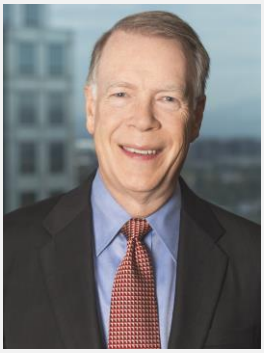
Specifically, the Court held that California's Wage Orders and Labor Code statutes never referenced or incorporated the *de minimis* doctrine, and such a doctrine would run contrary to the remedial purpose of California's Wage Orders. Furthermore, the Court held that the application of a *de minimis* rule would be inappropriate when "the law under which [the] action is prosecuted does care for small things," and that California's wage and hour laws clearly are concerned with "small things," such as the availability of duty-free 10 minute breaks. The court recognized that the California Division of Labor Standards Enforcement ("DLSE") had adopted the *de minimis* standard, but found the DLSE's interpretation was not controlling.

Notably, the Court declined to 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." But the Court found that the *de minimis* doctrine was not applicable to the case at hand, holding that Starbucks could not use the doctrine to avoid paying employees when it "require[d] its employees to work minutes off the clock on a **regular basis** or as a **regular feature** of the job." (Emphasis added.)

In other words, because Troester regularly performed tasks on a daily basis as part of his job requirements (and outside of clocked time), Starbucks should have been recording and paying for all such time. The fact that these tasks were non-incidental, and amounted to several minutes daily, caused the employer's argument that the time in this case was "*de minimis*" to fall on deaf ears at the state Supreme Court.

The Takeaway

Even though off-the-clock work should always be prohibited, some employers have relied on federal precedent in assuming the *de minimis* doctrine might excuse employees' performance of small tasks outside of logged time at the beginning and/or end of their shifts. Although two concurring opinions in *Troester* suggested that truly trifling amounts of unrecorded work time might not support claims for unpaid wages, the *Troester* case presented a poor vehicle for any sympathetic consideration of that position. In light of this decision, California employers should carefully re-evaluate any policies or practices under which *de minimis* time goes uncompensated.



James L. Morris
(714) 641-3483
jmorris@rutan.com

Seth Ort
(714) 641-3459
sort@rutan.com