Of Trifles And Truffle Mochas: How A Recent Case Against Starbucks May Impact Retailers

Insights
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This past summer, in a high-profile case brought against Starbucks, the California Supreme Court resolved an open question concerning compensable time. Or, at least it did to some extent.

The court held that California law has not adopted the business-friendly "de minimis" doctrine found in the federal Fair Labor Standards Act (FLSA) and also held that the doctrine didn't even apply to the underlying facts of the specific case in question.

However, there is a sliver of hope for retailers. The court expressly declined to decide "whether there are circumstances where compensable time is so minute or irregular that it is unreasonable to expect the time to be recorded," meaning there might be circumstances where the de minimus doctrine could be applied as a defense. What do retail employers need to know about this decision?

Of Trifles
The de minimis doctrine comes from the Latin maxim, *de minimis non curat lex*, which translates to, "the law does not concern itself with trifles." In the case of wage and hour law, this means that small acts performed off the clock need not count toward "hours worked" where attempting to capture the time is not practical.

A decades-old concept grounded in practical considerations, the FLSA's de minimis doctrine is not meant to allow employers to disregard even small amounts of time that can be easily captured. Rather, it means only that employees cannot recover pay for time that is difficult to account for from an administrative standpoint. But in the age of smartphones and other precise time-keeping devices, there are fewer and fewer circumstances that prevent the accurate documentation of compensable time.

Of Truffle Mochas
Douglas Troester was a shift supervisor at Starbucks; he brought a putative class action alleging that he was required to perform a number of tasks off the clock at the end of his shift in violation of California law. Specifically, the computer software required him to clock out before initiating the "close store procedure," which transmitted daily sales, profit and loss, and store inventory data to corporate headquarters. Troester then completed additional required tasks, including activating the alarm, exiting the store, locking the front door, and escorting his coworkers to their vehicles. His closing tasks totaled, on average, four to 10 minutes per workday.

Starbucks used the de minimis doctrine to convince the trial court to dismiss the claims. But Troester appealed the decision to the 9th Circuit (which covers federal cases out of California and many other western states), and the federal appeals court asked the California Supreme Court to clarify state law. On July 26, the court weighed in and departed from the federal law's more employer-friendly stance.

The California Supreme Court examined California statutes, case law, and wage orders to determine that none had adopted the de minimis doctrine. The court further found that in this case, where the employees routinely worked several minutes off the clock, the de minimis doctrine did not even apply. However, the Court declined to say that the de minimis doctrine could *never* apply, leaving that question to be answered another day.

What This Means For Retailers

The opening and closing tasks Troester performed as a shift supervisor are tasks that are often performed by opening and closing shift supervisors at retail store locations—locking and unlocking doors, activating and deactivating alarms, and running reports with daily sales data. Under this new decision, such regular, required tasks can no longer be disregarded as de minimis.

As a result, retail employers should work to identify the best method to make sure all compensable time is captured and compensated for. We recommend you work with your California-based Fisher Phillips attorney to identify practical solutions that will work for your stores.

But What About Bag Checks?

As you may recall, the U.S. Supreme Court issued a ruling a few years ago that held the FLSA does not require retail employers to compensate their employees for time spent waiting for their personal belongings to be checked at the end of their shifts. However, you may also recall that we warned the same rule may not apply under California law.

Like with *Troester*, the 9th Circuit has asked the California Supreme Court to weigh in on a case against Apple, Inc. on the question of whether bag checks are permissible under state law. The arguments in the case focus on the voluntary aspect of employees bringing their personal bags to work. The issue has now been fully briefed and is awaiting hearing, and we should have a final ruling soon. Be sure to sign up for our Legal Alerts to get the latest news on the Apple case and other potentially game-changing decisions.

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Service Focus

Wage and Hour