De Minimis No More? California Supreme Court Finds Modern Technology Requires Employers to Better Track and Compensate Employees for Minimal Amounts of Off-The-Clock Work

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Today, the California Supreme Court issued its ruling in *Troester v. Starbucks Corporation*, and departed from federal law's more employer-friendly version of the *de minimis* rule, which it characterized as stuck in the "industrial world." In holding that Starbucks Corporation must compensate hourly employees for off-the-clock work that occurs on a daily basis and generally takes four to ten minutes after the employee clocks out at the end of their shift, the California Justices announced they were ensuring California law was in line with the modern technologies that have altered our daily lives. De minimis means something is too minor or trivial to take into account, and the Court clarified what is trivial and what is not.

Prior to the Court's ruling, the 9th Circuit Court of Appeals had requested that the California Supreme Court answer an unsettled question under California law regarding the *de minimis* doctrine and its availability as a defense for wage claims under the California Labor Code. The Court's ruling sets the applicability of the *de minimis* defense at odds with its application under the Fair Labor Standards Act (FLSA), where the defense is recognized more broadly. Further, although the decision does not foreclose employers from raising defenses to wage claims based on circumstances where recording time would be difficult, today's ruling does place employers at risk for greater exposure to claims and penalties for time spent on tasks that are not compensable under the federal *de minimis* rule.

The *De Minimis* Doctrine Results in a Federal Court's Ruling in Favor of Starbucks

The *de minimis* doctrine is an established defense under the federal Fair Labor Standards Act (FLSA) for the administrative difficulty in recording small amounts of time for payroll purposes that an employee spends performing tasks off-the-clock. Federal courts hold that employers may disregard time as *de minimis* depending on three factors: (1) the practical difficulty the employer would encounter in recording the additional time, (2) the total amount of compensable time and (3) the regularity of the additional work. As outlined in our previous newsletter, *"Pre-Shift Does Not Mean "Before-Shift": Are Your Pre-Shift Meetings Violating the FLSA?* even under federal law the doctrine is not unlimited and companies risk exposing themselves to liability by holding pre-shift or post-shift meetings and relying on the *de minimis* defense to justify the impracticality of properly counting hours worked.

In the case before the California Supreme Court, the facts showed that Douglas Troester worked for Starbucks as an hourly shift supervisor. Starbucks did not pay him wages for performing store closing tasks after he was required to clock out. Troester presented evidence that he was required to clock out on every closing shift prior to initiating the "close store procedure" on a back office computer. Additionally, he claimed that per Starbucks' policy, he was required to walk his co-workers to their cars after activating the alarm, exiting the store, and locking the front door. Troester also presented evidence that occasionally he waited with employees for their rides to arrive and brought in store patio furniture mistakenly left outside. On average, he worked four to ten minutes of off-the-clock work, and this totaled 12 hours and 50 minutes during his 17-month period of his employment. The unpaid time added up to $102.67. Applying the *de minimis* doctrine, the federal district court granted summary judgment in Starbucks' favor. Troester appealed the decision to the Ninth Circuit Court of Appeals. Lacking guidance on whether the *de minimis* defense is available for wage claims brought under the California Labor Code, the 9th Circuit requested the California Supreme Court resolve the issue.

The California Supreme Court Reverses the Federal Court's Decision and Finds the De Minimis Doctrine Inapplicable to Mr. Troester's Particular Case.

The California Supreme Court first made it clear that neither the California Labor Code nor the California Wage Orders have adopted the *de minimis* doctrine found in the FLSA. It also made it equally clear that when employees like Troester must be paid for regularly occurring work that lasts several minutes per day. Significantly, however, the Justices left open whether there are wage claims involving employee activities that are so irregular or brief in during that it would be unreasonable to require compensation for the time spent on them. For example, the decision left open whether any of the following circumstances require compensation to employees:

- An employer requires workers to turn on their computers and log in to an application in order to start their shifts. Ordinarily, this process takes employees no more than a minute (and often far less, depending on the employee's typing speed), but on rare and unpredictable occasions a software glitch delays workers' log-ins for as long as two to three minutes.
- An employer ordinarily distributes work schedules and schedule changes during working hours at the place of employment. But occasionally employees are notified of schedule changes by e-mail or text message during their off hours and are expected to read and acknowledge the messages.
- After their shifts have ended, employees in a retail store sometimes remain in the store for several minutes waiting for transportation. On occasion, a customer will ask a waiting employee a question, not realizing the employees is off duty. The employee – with the employer's knowledge – spends a minute or two helping the customer.

In a concurring opinion, two Justices indicated the *de minimis* concept could be invoked in the above circumstances because requiring accurate accounting for such time may well be impractical and unreasonable. Four Justices are needed for a majority ruling and it was clear most of them did not

want to prejudge these type of cases. Still, the majority opinion left the door open for some common sense under the appropriate circumstances. In light of the decision by the California Supreme Court, employers should consider implementing these three best practices to avoid potential violations:

1. Review your company's pre-shift, post-shift, and similar practices to ensure there is no regularly occurring off-the-clock work that you should capture as working time for which employees receive compensation.
2. Adjust your written policies as necessary to ensure compliance with the strict time-keeping requirements under California law.
3. Consider whether technological innovations could assist in capturing all working hours, such as electronic timekeeping methods, or practical methods such as placement of time clocks in areas that will help capture all working time.
4. Appropriately train managers and investigate all claims of "pre-shift" or "post-shift" work. For example, if you hear employees talking about their pre-shift meeting or "post-shift" work, you should clarify whether the employee was compensated for that task or whether it was off-the-clock. Obviously, if it's the latter, step in and correct the situation.

If you have any questions, contact the author, your Fisher Phillips attorney, or an attorney in any of Fisher Phillips' five California offices.

This Legal Alert provides an overview of a specific state court ruling. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

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