California High Court Restricts Employer-Friendly 'De Minimis' Defense for Off-the-Clock Work

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Last Thursday, the California Supreme Court issued a ground-breaking decision that severely limits employers' ability to rely on the 'de minimis' doctrine as a defense to not paying for minimal increments of off-the-clock work. The 'de minimis' doctrine has been applied by federal courts to find that employers do not need to pay for small increments of time worked by employees where the increments are difficult to track, trivial, or irregular. California, however, has rejected the federal standard.

A Starbucks shift supervisor, Douglas Troester, filed suit in 2012 on behalf of himself and a putative class of all nonmanagerial employees who performed similar duties, alleging that Starbucks had required him to clock out on every closing shift before performing tasks such as activating an alarm system, locking the door, transmitting sales information to corporate headquarters, and occasionally reopening the store so a coworker could retrieve a coat. The time spent performing these various off-the-clock tasks totaled approximately 12 hours and 50 minutes over the course of his 17 months of employment. Mr. Troester's unpaid time added up to around $103 in wages. The California Supreme Court held that this time was compensable. The California decision, titled *Troester v. Starbucks Corp.*, will have significant consequences for all California employers that employ workers paid by the hour.

The new California standard established by *Troester* holds that employers must track and pay for time spent on all regularly occurring tasks, even if the tasks take only a few minutes. The reasoning is that employers are in the best position to track the time worked by their employees and that technology has progressed to make tracking small bits of time more feasible. Further, the Court indicated that what Starbucks called 'de minimis' was "not de minimis at all to many ordinary people who work for hourly wages." In Mr. Troester's case, the $103-worth of alleged off-the-clock work was "enough to pay a utility bill, buy a week of groceries, or cover a month of bus fares."

Of note for employers, the decision leaves open *some* room for interpretation. The *Troester* opinion states: "We leave open whether there are wage claims involving employee activities that are so irregular or brief in duration that it would not be reasonable to require employers to compensate employees for the time spent on them."

However, no employer should want to test this area of interpretation. Instead, employers should take extra precautions to track time spent by employees completing seemingly quick and minor tasks while off-the clock. This may involve changing procedures for clocking in and out as well as changing employer attitudes towards how strictly employee time should be monitored. As the recent *Troester v. Starbucks* decision demonstrates, little increments of employee time can add up and result in very costly lawsuits.