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## Does The De Minimis Defense Apply To California Labor Code Claims?

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The California Supreme Court recently heard the case of *Troester v. Starbucks Corporation* which could significantly increase employers' exposure to claims by hourly paid employees for small pre-shift and post-shift tasks that are currently treated as insignificant and not compensable.

The *de minimis* doctrine, an established defense under the Fair Labor Standards Act ("FLSA"), permits employers to disregard time spent by employees on minor pre-shift and post-shift tasks (generally, to the extent less than 10 minutes). The applicability of the *de minimis* defense is dependent upon factors such as: (a) the practical difficulty the employer would encounter in recording the additional time; (b) the total amount of compensable time; and (c) the regularity of the additional work. This defense usually applies to the minimal amount of time spent by employees, for example, in logging onto a computer or donning and doffing safety equipment.

Specifically, in this case, Douglas Troester was a non-exempt supervisor at a Starbucks store. He filed a lawsuit against Starbucks alleging that it failed to pay him wages for time spent performing certain tasks at closing, such as activating the store alarm, locking the front door and walking co-workers to their cars. The federal district court granted summary judgment in favor of Starbucks and found that, while Troester's closing activities occurred regularly, they only took 4 to 10 minutes per day and were administratively difficult to track and compensate. Troester appealed this decision to the Ninth Circuit Court of Appeals which certified for decision by the California Supreme Court the question of whether the *de minimis* defense is available to wage claims under the California Labor Code.

During oral argument before the California Supreme Court, the justices noted that, while the defense is recognized in FLSA regulations, no corresponding reference to it exists under the California Labor Code or in the Wage Orders. On the other hand, the justices also seemed concerned that striking down the defense would cause an increase in the filing of costly lawsuits over very small amounts of unpaid time worked.

Pending a decision from the California Supreme Court, employers should consult with counsel regarding the review and implementation of their timekeeping policies and procedures for *de minimis* off-the-clock work.

A decision is expected from the California Supreme Court within the next 90 days.

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