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California Supreme Court: the FLSA's de minimus rule does not apply to California wage and hour claims, especially wage and hour class actions that are designed to aggregate small claims

by Jon Michaelson

It is a small world after all. Last week, the California Supreme Court decided that the *de minimus* rule, imported by the U.S. Supreme Court into the Fair Labor Standards Act (FLSA) in 1946 (*Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680), does not apply to a wage and hour claim asserted under California law. *Troester v. Starbucks Corp.*, Opinion No. S234969 (Cal. July 26, 2018) (opinion answering question certified by Ninth Circuit Court of Appeals). The California Supreme Court, however, left open the question whether some floor exists below which an employer need not measure and compensate for periods of time which arise irregularly and are truly "trifles."

Plaintiff Douglas Troester worked as a shift supervisor at Starbucks in 2009 and 2010. During his tenure, he devoted time to closing tasks after clocking out. Troester's unpaid efforts totaled nearly 13 hours, representing just over $100 (exclusive of interest and penalties). In 2012, he filed an action in California state court seeking compensation for himself and others similarly situated for these unpaid wages under various provisions of the California Labor Code. Starbucks removed the case to federal court and moved for summary judgment based on *Anderson* and its progeny applying the federal *de minimus* rule. The District Court agreed and granted summary judgment in Starbucks' favor. On appeal, and noting a dearth of controlling state authority on the subject, the Ninth Circuit certified to the California Supreme Court the question whether the FLSA's *de minimus* standard governed claims asserted under California wage and hour laws.

The rule in dispute arises from the maxim that "the law does not concern itself with trifles." The California Supreme Court started its analysis by referencing the Ninth Circuit's observation that "[m]ost courts have found daily periods of approximately 10 minutes *de minimus* even though otherwise compensable." *Id.* at 7 (quoting *Lindow v. United States*, 738 F. 2d 1057, 1062 (9th Cir. 1984)). But the Court could not identify any such provision in the State's Labor Code or in any of the regulatory enactments (18 formal "wage orders") implementing those laws. Indeed, in interpreting those authorities, the Court emphasized: "Federal regulations provide a level of employee protection that a state may not derogate. Nevertheless, California is free to offer greater protection." *Id.* at 8 (quoting *Mendiola v. CPS Security Solutions, Inc.* (2015) 60 Cal.4th 833, 843). The Labor Code "contemplates that employees will

be paid for all work performed." *Id.* at 9. The Court further noted: "Starbucks cites no statutory or regulatory history, and we found none, that indicates an intent by the IWC [Industrial Welfare Commission] or the Legislature to impliedly adopt such a [*de minimus*] rule." *Id.* at 10. And in light of what it assessed to be clear legislative and regulatory intent, the Court brushed aside the one published California Court of Appeal decision applying the *de minimus* rule as not being generally applicable, as well as opinions issued by the state Department of Labor Standards Enforcement as advisory only.

Having found no basis for imposition of a *de minimus* rule in employment statutes and regulations, the California Supreme Court turned to general jurisprudence. There, the maxim at issue – that the law will not concern itself with trifles – appears in California Civil Code section 3533. But the Court declined to address whether the *de minimus* concept "may ever apply to wage and hour claims given the wide range of scenarios in which this issue arises." *Id.* at 13. Instead, it made a decision based only on the facts as described by the Ninth Circuit Court of Appeals. In doing so, it relied on regulations and associated case law which explicitly or implicitly rejected the idea that compensation for time worked of less than 10 minutes was unimportant or otherwise not subject to regulation by the State.

The California Supreme Court pointed further to "[t]wo additional considerations [to] reinforce our reluctance to fully adopt *Anderson*'s reasoning [i.e., the *de minimus* rule] as a matter of state law." *Id.* at 17. One was that "the modern availability of class action lawsuits undermines to some extent the rationale behind a de minimus rule with respect to wage and hour actions. The very premise of such suits is that small individual recoveries worthy of neither the plaintiff's nor the court's time can be aggregated to vindicate an important public policy." *Id.* at 17. The second was that "many of the problems in recording employee work time discussed in *Anderson* 70 years ago, when time was often kept by punching a clock, may be cured or ameliorated by technological advances that enable employees to track and register their work time via smartphones, tablets, or other devices. We are reluctant to adopt a rule purportedly grounded in 'the realities of the industrial world' (*Anderson*, *supra*, 328 U.S. at p. 692) when those realities have been materially altered in subsequent decades." *Id*. at 18.

Within this framework, the Court had no difficulty deciding that the *de minimus* rule did not apply to Mr. Troester: "a few extra minutes of work each day can add up. … What Starbucks calls 'de minumus' is not de minimus at all to many ordinary people who work for hourly wages." *Id*. at 20. The amount of money would be sufficient for Troester to "pay a utility bill, buy a week of groceries, or cover a month of bus fares." *Id*. Plus, the Court said, employers could avoid administrative challenges of accounting for small amounts of time by restructuring work assignments, making use of more advanced time tracking tools, making reasonable estimates, or even following a fair rounding policy. But, in any event, "we decline to adopt a rule that would require the employee to bear the entire burden of any difficulty in recording regularly occurring work time." *Id*. at 20-21.

Given the California Supreme Court's pronouncements in *Troester*, it is easy to predict an uptick in wage and hour class actions involving relatively small individual claims. This is especially true since the Court left for future determination any point at which work expended is no more than a trifle. Class actions for

uncompensated small increments of work may also spread to other states, such as Massachusetts and New York, which to date may have followed the FLSA on this subject but, like California, are generally more protective of employee rights and have not formally incorporated the *de minimus* doctrine into wage and hour statutes or regulations.