Insights: Alerts

California Supreme Court Restricts “De Minimis” Defense in State-Law Claims for Small Amounts of Unpaid Wages

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Under the federal Fair Labor Standards Act, a well-established body of law rejects claims for unpaid minimum wages and overtime based on very small increments of time that are administratively difficult to record. This doctrine – called the de minimis rule – typically leads courts to dismiss claims based on a failure to compensate employees for up to a few minutes of working time falling outside the regular work schedule when the realities of the work setting make it difficult or impossible to capture and record that time. Recently, the California Supreme Court addressed the question of whether the de minimis rule applies to claims under California's state wage-and-hour laws. On July 26, 2018, that court held in *Troester v. Starbucks Corp.* that the de minimis rule does not apply to wage-and-hour claims under California law when the small increments of uncompensated time are regularly recurring.

The Court's Decision in *Troester v. Starbucks Corp.*

In *Troester*, a federal trial court addressing state-law claims for unpaid wages brought by a California coffee shop employee found that the employer's time-keeping system required the employee to log out of the system before closing the coffee shop at the end of the workday. The trial court found that the employee regularly spent from 4 to 10 minutes each workday performing required, compensable tasks after logging out of the time-keeping system. Borrowing the de minimis rule from the Fair Labor Standards Act, the trial court entered judgment for the employer on the claims of unpaid wages because the employee's claim, which totaled only $102.67 over his 17 months of employment, was de minimis and therefore not actionable. On appeal, the U.S. Court of Appeals for the Ninth Circuit noted that there had been no ruling from the California Supreme Court on the application of the de minimis rule to state wage-and-hour claims and asked the state court to rule on that issue.

In doing so, the California Supreme Court first examined the language of the California wage-and-hour statutes and legally binding wage orders and found no indication that the state had adopted the de minimis rule in those laws. Observing, however, that California courts had applied principles analogous to the de minimis rule in some other state-law contexts, the court went on to decide whether the de minimis rule could be applied to state wage-and-hour claims. Ultimately, the court did not answer that question. Without deciding whether the de minimis rule could ever apply to wage-and-hour claims under California law, the court simply held that under the particular facts of this case, the rule did not apply. Here, the requirement that the employee work several minutes off the clock was a regular and recurring feature of the employee's job. In such circumstances, the court concluded, an employer may not invoke the de minimis rule to evade its obligation to compensate the employee for all hours worked.

Practical Implications

Although the ruling in *Troester* did not completely foreclose the possibility that the de minimis rule may be applied under some circumstances to California wage-and-hour claims, the court's reasoning suggests that California employers may have a difficult time prevailing on a de minimis defense. For example, the court observed that the de minimis rule is based in part on the administrative difficulty in recording small amounts of time for payroll purposes. The rule was first applied in the 1940s when working time was often recorded by having employees punch a time clock. The California Supreme Court noted that technological advances over the years have made it easier for employers to capture time worked by employees and observed that, as a fallback, employers could always estimate the amount of off-the-clock time worked by nonexempt employees. Certainly in the case of regular and anticipated off-the-clock work, California employers will now be unable to rely on the de minimis rule to avoid liability for unpaid compensation and should implement procedures for recording and compensating nonexempt employees for even small amounts of work regularly performed outside of their regular working hours. In California, the failure to pay compensation owed to an employee can result in substantial monetary penalties for the employer.

Although the *Troester* case deals exclusively with California law, it may serve as a warning for employers in other jurisdictions. Many states have wage-and-hour laws comparable to the federal Fair Labor Standards Act, and in those jurisdictions that have not formally adopted the de minimis rule for purposes of their state wage-and-hour laws, the possibility remains that a court could follow the reasoning of the *Troester* decision and find the rule inapplicable to state claims for unpaid wages.

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