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Federal De Minimis Rule Does Not Apply To California State Wage And Hour Claims

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Mark Wallin
Partner

John F. Kuenstler
Partner

The U.S. Court of Appeals for the Ninth Circuit recently held that the federal de minimis rule, which can be a defense to allegations of "trifling amounts" of off-the-clock work, does not apply to wage and hour claims brought pursuant to California state law.

The ruling arrived just shy of the one-year anniversary of *Troester v. Starbucks Corp.*, in which the California Supreme Court held that the federal de minimis rule does not apply to California labor law and regulations. Notably, although the Ninth Circuit recognized that *Troester* declined to establish a bright-line California analogue to the federal de minimis rule, the court interpreted *Troester* as allowing parties to raise a de minimis defense to California state law claims under more narrow circumstances.

In *Rodriguez v. Nike Retail Servs.*, on behalf of a class of employees working at the defendant's California retail stores, the plaintiff brought a class action lawsuit under California law alleging that the defendant's employees had improperly been required to perform uncompensated off-the-clock work in connection with post-shift security inspections.

The plaintiff initially filed in California state court, and the defendant removed to federal court under the Class Action Fairness Act. The district court granted summary judgment in the defendant's favor, prior to the *Troester* decision. The district court found that the amount of time the class plaintiffs spent on off-the-clock work – somewhere between zero seconds and several

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minutes – fell within the federal de minimis rule range, and was thus non-compensable as a matter of law. The class plaintiffs appealed, and while the appeal was pending, the California Supreme Court issued its decision in *Troester*.

In granting summary judgment, the district court had relied upon the federal de minimis rule. The Ninth Circuit reversed, noting that the California Supreme Court expressly rejected the federal de minimis rule in *Troester*. The Ninth Circuit cited *Troester's* reasoning that California labor laws are more protective than federal labor laws, specifically providing that employees must be paid for "all hours worked," and that nothing in the California Labor Code incorporates the federal de minimis rule.

Based upon the *Troester* opinion's "passing mention of 'minutes,'" the defendant argued to the Ninth Circuit in support of a 60-second de minimis rule under California state law. While the court declined to construe *Troester* as the defendant argued, it did take a stab at construction of a California de minimis rule.

Relying on *Troester*, the court emphasized two considerations: the length of time allegedly worked by the employee off the clock, and the regularity with which the alleged off the clock work took place. Specifically, the Ninth Circuit stated, "we understand the rule in *Troester* as mandating compensation where employees are regularly required to work off the clock for more than 'minute' or 'brief' periods of time." That is, employers need not "account for split-second absurdities," nor situations where the work is so irregular that it would not be reasonable to expect that such time be recorded by the employer. Yet, "where employees are required to work for more than trifling amounts of time on a regular basis . . . *Troester* precludes an employer from raising a de minimis defense under California law."

Rodriguez provides several important takeaways for employers, especially employers who operate in California or in multiple states. First, not all state wage and hour laws track the federal Fair Labor Standards Act. Thus, not all states recognize federal wage and hour defenses or otherwise limit or minimize such defenses. Second, while the Ninth Circuit recognized that the California Supreme Court declined to create a bright line California de minimis rule in *Troester*, by setting out its own test based upon the *Troester* decision, the Ninth Circuit seemed to implicitly recognize that California might recognize a de minimis rule in narrow circumstances. However, it remains to be seen how the district court will apply the Ninth Circuit's California de minimis rule on remand.