

# Buchalter

## **Moments in Time: Are Your Non-Exempt Employees Properly Compensated for All Minutes Worked?**



Presented By

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- Issues include compensation for non-exempt employees for small amounts of time
- History of exclusion – both federal and state
- Review of the *Starbucks* decision
- Implications
- Potential exposure
- Avoiding/minimizing risks



- Definition of “de minimis” doctrine
- Reasons for the doctrine
- Application of the doctrine
  - Federal
  - State

de min·i·mis

/də 'minj\_mēs/

*adjective*

too trivial or minor to merit consideration, especially in law.  
“de minimis fringe benefit rules”

- Should small amounts of time spent by non-exempt employees closing up after clocking out be discounted in their compensation?

*Troester v. Starbucks Corp.*, 5 Cal. 5th 829 (2018)

- Mr. Troester clocked out on his closing shifts
- Mr. Troester then transmitted daily sales, profit and loss, and store inventory data to the company on a separate computer
- Mr. Troester then activated the alarm, exited the store, locked the door, and walked co-workers to their cars, consistent with company policy
- Mr. Troester was not paid for these post-clocking out tasks



- Non-exempt employees must be paid for all compensable “off the clock” work
- Minutes are not trifles, and add up
- Starbucks argued that the amount of time (a total of \$102.67 over 17 months for the named Plaintiff) should be disregarded



decides:

- California has not adopted the *de minimis* doctrine
- The relevant wage order and statutes do not permit application of the *de minimis* doctrine to the facts before it



- Case addressed several minutes of “off the clock” work each day
- Modern availability of class actions undermines need for *de minimis* doctrine
- Time recording problems of years ago no longer exist
- Non-exempt employees should be paid for all compensable time



# Potential limitations of the decision

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- The case concerned “regular” off the clock work
- The court recognized that some periods of time are too brief or irregular to measure
- The court recognized some rule of reason
- Decision may not affect lawful rounding practices

- Post-shift Bank Deposits
- Call-in practices
- Retail
- Compensable time vs. working time
- Post-shift searches
- Class certifications and settlements



- Unpaid wages and overtime
- Liquidated damages
- Interest
- Attorney's fees and costs
- Penalties
- Potential class actions, PAGA claims and audits
- Individual liability
- Media exposure

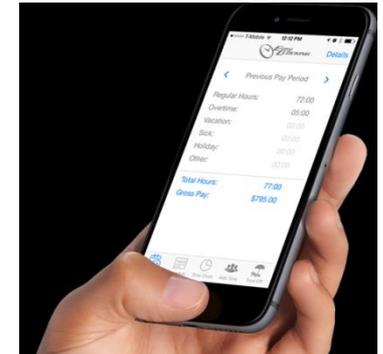
- Audit compensation practices for non-exempt employees
  - Recording of “compensable” time
- Audit duties and responsibilities of non-exempt employees
- Eliminate “off the clock” work
  - Post-clocking out closing duties



# What Should Employers do Now?

*cont'd*

- Consider use of mobile timekeeping applications
- Ensure HR and decision-makers understand, through training or otherwise, how to properly compensate non-exempt employees
- Consider mandatory arbitration and class action waivers
- Put timekeeping systems near entrances/exits



*cont'd*

- Consider alternative steps
  - Estimate (and pay) post-clockout time, using time studies
- Limit calls/emails to off-duty non-exempt employees and require them to report any after hours work
- Modify systems and policies to comply with the *Starbucks* decision

**Questions?**

# THANK YOU!

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