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California Supreme Court Confirms: NO Rounding

In the 2018 case *Troester v. Starbucks Corp.*, the California Supreme Court held that employers are required to pay employees at least minimum wage for every minute worked, and declared that there is no such thing as *de minimus* time which does not have to be compensated. As we have been instructing since that decision, while that was not a case dealing with rounding, its holding is entirely inconsistent with rounding, and you should have stopped such a practice back then.

With its latest case on the subject, *Donohue v. AMN Services, LLC* (Cal., Feb. 25, 2021, No. S253677), the California Supreme Court has gone even further, specifically confirming that meal breaks may not be rounded, and this if you do not have precise accurate meal break start and stop time, there is a presumption that you failed to give a proper meal break. When such a presumption arises, it then becomes your duty to prove that you gave a proper meal break, not the employee's duty to prove a failure.

We know that employers do not use rounding policies to try to short employees paid time. Instead, employers use rounding policies because it makes calculating payroll easier and more reliable. Anyone that has ever tried to manually tally up a timesheet consisting of actual time punches knows how tedious that task can be. However, the Court does not care that using actual time punches will make calculating payroll more difficult (and expensive). Moving forward, employers must ensure that they are carefully recording the actual start and stop times of all shifts and 30-minute meal periods.

The Court's decision in *Donohue* is a continuation of a developing theme in California's wage and hour landscape. Courts are requiring increasingly strict adherence to California's onerous wage and hour laws. As technology advances and becomes more affordable, the Court will require increasing precision in timekeeping practices.

As a practical matter, the *Donohue* decision also requires employers that use manual (written) timesheets to train employees and crew bosses **not** to record the same start and stop times every day. (i.e., a 6:00 a.m. start time each day, etc.) If your employees or crew bosses are recording the same start and stop times every day, this will give the appearance that a rounding policy is being applied. In other words, in addition to express rounding policies, *Donohue* also condemns *apparent* rounding policies where an employer either (A) should know that rounding is being applied, or (B) cannot convince a jury that rounding is not being applied. After *Donohue*, plaintiff's attorneys are going to argue that timesheets with the same entries recorded every day are evidence that a rounding policy is being applied. Employers will be extremely hard

pressed to convince a judge or jury that a crew starts and stops at exactly the same time every single day.

What This Means for Employers:

If your timekeeping system is set up to round time punches to the nearest 15 minutes, 10 minutes, or even 5 minutes: **STOP**. There is no longer any argument - rounding policies violate the Labor Code. Period. Full-stop. This is true even if your rounding policy is neutral (meaning it does not favor either the employer or employee in the long run).

If you are dealing with a wage and hour claim, or if you need to determine whether your timekeeping practices are defensible in light of *Donohue*, contact the attorneys at Barsamian & Moody at (559) 248-2360.

The goal of this article is to provide employers with current labor and employment law information. The contents should neither be interpreted as, nor construed as legal advice or opinion. The reader should consult with Barsamian & Moody at (559) 248-2360 for individual responses to questions or concerns regarding any given situation.