

Services

Employment
Litigation Defense

Labor & Employment

Professionals

JOSEF S. GLYNIAS

ST. LOUIS:

314.345.6208

JOE.GLYNIAS@

HUSCHBLACKWELL.COM

ANDREW J. WEISSLER

ST. LOUIS:

314.480.1500

AJ.WEISSLER@

HUSCHBLACKWELL.COM

SCOTT D. MEYERS

ST. LOUIS:

314.345.6274

SCOTT.MEYERS@

HUSCHBLACKWELL.COM

ALLISON M. SCOTT

LOS ANGELES:

213.356.2946

ALLISON.SCOTT@

HUSCHBLACKWELL.COM

No "Well-Rounded" Timekeeping: Why California Employers Need to Stop Rounding Now

This week, the California Court of Appeal effectively shut the door on rounding time records in California. In *Camp v. Home Depot*, the court held that the employer's facially neutral rounding policy violated California law by depriving a single employee of approximately seven hours of pay over five years, even though it overpaid other employees and was a net positive to all employees. This decision continues a series of decisions from California courts that instruct employers to capture and pay for the amount of time an employee has actually worked—not a rounded approximation.

Background

Previously, in *See's Candy Shops, Inc. v. Superior Court*, a California Court of Appeal ruled that an employer's time rounding policies may be lawful as long as they are neutral, both facially and as applied to the employer's workforce. The *See's Candy* court recognized that time rounding is a practical method for calculating work time without imposing any burden on employees. The court upheld rounding policies so long as they would not undercompensate a group of employees "over a period of time."

Six years later, the California Supreme Court in *Troester v. Starbucks Corp, Inc.* rejected the de minimis provision found in the Fair Labor Standards Act (FLSA). Before *Troester*, many California courts held that the de minimis doctrine provided a defense against claims that an employer failed to pay for all hours worked when the amounts of time at issue were short and there were practical administrative difficulties in recording the actual time worked by the employee. The Court concluded the de minimis doctrine was incompatible with California Labor Code and Wage Orders, which require payment for *all* time worked and generally confer broader rights to employees than the FLSA.

The Court also explained that it was reluctant to adopt the *de minimis* doctrine when technological advances enable employers to more efficiently track small amounts of regularly occurring work time.

Last year, in *Donohue v. AMN Services, LLC*, the California Supreme Court rejected rounding in the context of meal periods. In reaching this conclusion, the Court explained that rounding was incompatible with meal period provisions that are designed to prevent even minor infringements on meal period requirements. The *Donohue* Court notably opined that the ability to track time precisely with technology might diminish the benefits of neutral rounding policies.

Camp Analysis

That brings us to *Camp*. The *Camp* court centered its conclusion—that the employer’s rounding system failed to pay all wages due—on evidence demonstrating that Camp lost over seven hours of pay because of the employer’s rounding practices. In other words, the employer’s timekeeping system accurately captured the total number of minutes Camp worked, but due to rounding, the employer failed to pay him for all of that time. The employer defended its rounding policy by pointing to *See’s Candy* and the fact that, in the aggregate, its rounding policy resulted in employees being paid for more time than they actually worked.

The court made four critical statements in rejecting rounding practices that fail to pay any individual employee for recorded time worked:

California requires employees to “be paid for all work performed.”

The regulatory scheme for wage statutes and wage orders focuses on “small things,” including small amounts of work time (i.e., minutes).

Although federal regulations specifically allow for rounding, no California statute or wage order has impliedly adopted this averaging practice.

Advances in technology allow employers to “more easily and precisely capture time worked by employees.”

In short, the court determined that where an employer can capture time worked, it must pay for that time for each employee involved.

The court invited the California Supreme Court to rule on whether neutral rounding, as established in *See’s Candy*, is proper, especially considering technological advances that allow employers to capture all time worked by employees.

While the primary opinion did not explicitly disagree with *See's Candy*, Justice Wilson wrote a concurring opinion explicitly disagreeing with the holding in *See's Candy* and stating that *See's Candy* should be overruled entirely.

What this means to you?

California employers should eliminate rounding policies, especially when utilizing a timekeeping system that records all time worked. While the *Camp* decision does not overturn the *See's Candy* decision, trial courts are free to choose whether to follow *See's Candy* or *Camp* when determining whether employees were properly paid based on a rounding policy.

Camp, *Donohue*, and *Troester* together show that California courts are trending toward finding an inviolate and absolute burden on employers to capture and pay for all work activities. Employers in California should therefore review all of their pay practices and policies (rounding and otherwise) to ensure they are line with those decisions. This may include examining the use of rounding, manual timesheets, exception hourly timekeeping, and any other practice that may not accurately capture and pay for working time.

Contact us

For more information about this case or ways to review your internal timekeeping systems, please contact Joe Glynias, A.J. Weissler, Scott Meyers, Allison Scott, Sarah George, or your Husch Blackwell attorney.