

## Legal Trends

### **THE YEAR IN REVIEW** **CALIFORNIA WAGE AND HOUR LAW**

Any employer operating in California understands that State's wage and hour laws can be complex, ambiguous and at times seemingly contradictory. They also present several "traps for the unwary" that can lead to significant legal exposure, particularly where the rules deviate from those under the Federal Fair Labor Standards Act (FLSA).

A review of key 2018 California court opinions reflects this trend, as the courts issued rulings regarding the classification of independent contractors, the compensability of *de minimis* amounts of "off-the-clock" work, the methodology for computing overtime rates, and meal and rest breaks.

#### ***Independent Contractors***

Earlier this year the California Supreme Court adopted a new, more stringent method – the so-called "ABC Test" – for determining whether a worker legitimately can be classified as an independent contractor. The test *presumes* the worker is an employee unless the employer can demonstrate that (A) the worker has freedom from control over how to perform the services; (B) the service is outside the employer's normal variety; and (C) the worker is engaged in an independently established role. The ABC Test is expected to result in far fewer workers being properly classified as independent contractors.

#### ***De Minimis "Off-the-Clock" Work***

Under the FLSA insubstantial amounts of time beyond scheduled work hours that are administratively impractical to record can be disregarded and uncompensated. A similar rule is set forth in the manual published by the California Division of Labor Standards Enforcement (DLSE). The California Supreme Court ignored the manual, ruling that state law requires employers to pay for all work time, no matter how administratively difficult it may be to account for. Accordingly, the Court held that a shift supervisor could proceed with his claim that Starbucks failed to compensate him for the few minutes at the end of each shift it took him to punch out, initiate a sales data upload and lock up.

#### ***Computing the Overtime Rate***

California has long stood alone in requiring employers to pay overtime to non-exempt employees for each hour worked over 8 in a single day, regardless of how many hours such employees may have worked in that week. In March of this year, the California Supreme Court again set the State apart by holding that the overtime pay rate should not be calculated consistent with the FLSA but rather under the more generous methodology set forth in the DLSE's manual. (Yes, within months the California Supreme Court both rejected and accepted the DLSE manual!)



***Meal and Rest Breaks***

Unlike Federal law and the laws of several other states, California employers are required to provide meal and rest breaks after a certain number of continuous work hours. More specifically, employees are entitled to a 30-minute unpaid meal period after working five or more continuous hours, and 10-minute paid rest breaks near the middle of each work period of four hours. In October of 2018, the Wine Group LLC settled a class action lawsuit with 2,200 current and former employees for \$6.5 million, after the employees alleged they were required to work through meal and rest breaks.

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