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California Court of Appeals Rejects Neutral Rounding Policies

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For a decade, California courts had approved rounding policies that were neutral on their face and application. Such policies typically round an employee's clock in and clock out times to the nearest quarter hour. Then, in 2021, the California Supreme Court decided *Donohue v. AMN Services, LLC*, and held that employers could not round clock in/out times for meal periods. Now, in October 2022, the Sixth District California Court of Appeal's *Camp v. Home Depot U.S.A. Inc.* decision has cast doubt on the validity of neutral rounding policies for general timekeeping purposes.

Home Depot (like many employers) used Kronos to record employees' exact clock in and out times, and Home Depot then rounds those shift clock times to the nearest quarter hour. The plaintiffs alleged that Home Depot failed to pay them for every minute worked because of the rounding policy; one plaintiff had lost more than seven hours over the course of five years from the rounding policy. The trial court found the policy to be neutral on its face and its application and granted Home Depot's motion for summary judgment. The court of appeals reversed the decision.

The court of appeals relied on recent California Supreme Court decisions (*Donohue* and *Troester v. Starbucks Corp.*) for the proposition that employees will be paid for all time worked. The court noted that California's wage orders are "concern[ed] with small amounts of time" and "amounts measured in minutes are compensable where the worktime is regularly occurring." Further, there is nothing in the Labor Code or wage orders that permits underpayment of an individual employee for all time worked "where the employer can capture and has captured the employee's worktime in minute increments." And the court rejected the argument that rounding "makes it easier for employers to produce verifiable wage statements" because nothing in California law "privileges arithmetic simplicity over paying employees for all time worked."

The court invited the California Supreme Court to decide the validity of the decade-old rounding standard in the limited circumstance "where the employer can capture and has captured all the minutes an

employee has worked and then applies a quarter-hour rounding policy.” The court further “invite[d] the California Supreme Court to review the issue of neutral time rounding by employers and to provide guidance on the propriety of time rounding by employers, especially in view of the technological advances that now exist which help employers to track time more precisely.”

While it remains to be seen whether the Supreme Court will accept these invitations, the *Camp* decision increases the potential exposure for California employers that use rounding, especially when their timekeeping software captures time to the minute. Contact your Vorys lawyer if you have questions about rounding and timekeeping practices in California.