PennState Dickinson Law

DICKINSON LAW REVIEW
PUBLISHED SINCE 1897

Volume 127 | Issue 2

Spring 2023

Following in California's Footsteps?: Pennsylvania Eliminates the De Minimis Exception in State Wage and Hour Claims

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Following in California's Footsteps?: Pennsylvania Eliminates the *De Minimis* Exception in State Wage and Hour Claims

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ABSTRACT

Under the Fair Labor Standards Act ("FLSA"), employers risk receiving wage and hour violations if they fail to compensate employees for all "hours worked" or fail to adhere to minimum wage and overtime requirements. The *de minimis* doctrine provides an exception to this general rule and excuses employers from compensating employees for insignificant amounts of time spent on otherwise compensable off-the-clock work activities. Examples of *de minimis* off-the-clock work activities include waiting for a computer to load or waiting to log onto a computer network. These activities are considered *de minimis* because they take only a minute or less, and under the doctrine, employees cannot receive compensation for such trivial amounts of time under the FLSA. Employers must also comply with state wage orders and labor codes, which may provide higher protections than the FLSA. Because of the differences in worker protections, the *de minimis* doctrine's application will differ from an off-the-clock claim brought under the FLSA versus state wage and hour laws. In July 2021, Pennsylvania became the second state—after California—to refuse to apply the *de minimis* doctrine in state wage and hour claims. Pennsylvania should not eliminate the *de minimis* exception under state wage and hour law because (1) the doctrine has utility and roots in Pennsylvania law; (2) other jurisdictions have favorably cited to the doctrine in the realm of wage and employment disputes; and (3) the doctrine helps to create a barrier from unlimited disputes arising against employers.

* J.D. Candidate, Penn State University Dickinson Law, 2023; B.S., *cum laude* in Biology, Georgetown University, 2015. I dedicate this Comment to my dad, who has been fighting an intense cancer battle. The storms may come, but we are still standing. God's power is made perfect in weakness. You are my hero. I'll love you always and forever.

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INTRODUCTION

Clocking in and out of work. Unlocking and locking doors. Walking to and from the parking lot before or after a work shift. Should employers compensate employees for every single task that relates to their job? For example, should hospital employers compensate their employees who walk five minutes from a distant park-

ing lot into the hospital? Or compensate hourly workers, such as administrative staff, for the time spent walking to their desks after clocking in? While employers are required to compensate employees for all hours worked, off-the-clock activities that take shorter or trivial amounts of time often vary in duration and can be difficult to track and record.[1]

The *de minimis* doctrine excuses employers from compensating employees for otherwise compensable off-the-clock work activities.[2] The *de minimis* doctrine developed from the Latin legal maxim *de minimis non curat lex*: "[T]he law does not concern itself with trifles."[3] An amount of time that is *de minimis* in nature—a "trifle"—is of little value or importance.[4] Pennsylvania recognizes the *de minimis* doctrine in a variety of contexts,[5] and the doctrine aims to conserve judicial resources and prevent courts from spending time on such "trifles."[6] In the context of wage and hour law, three factors determine the *de minimis* doctrine's applicability: "(1) the practical administrative difficulty of recording the additional time; (2) the aggregate amount of compensable time; and (3) the regularity of the additional work."[7] In wage and hour disputes, employers bear the burden of proving the doctrine's application and use the doctrine as a defense to wage and hour claims concerning compensation for off-the-clock work activities.[8]

Under the Fair Labor Standards Act, employers must adhere to minimum wage and overtime requirements or risk receiving

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1. *See* Fast v. Applebee's Int'l, Inc., 502 F. Supp. 2d 996, 1006 (W.D. Mo. 2007) (holding that the time spent from walking in the door to clocking-in for work is *de minimis*); Corbin v. Time Warner Ent.-Advance/Newhouse P'ship, 821 F.3d 1069, 1081–82 (9th Cir. 2016) (finding that one minute spent logging into a time keeping system is *de minimis*); Hubbs v. Big Lots Stores, Inc., No. LA CV15-01601, 2017 U.S. Dist. LEXIS 85227, at *24–26 (C.D. Cal. May 12, 2017) (holding that time spent setting an alarm and exiting the store upon clocking out is *de minimis*).

2. *See* Anderson v. Mt. Clemens Pottery Co., 328 U.S. 680, 692 (1946).

3. *See* Jeff Nemeorfsky, *What is a "Trifle" Anyway?*, 37 GONZ. L. REV. 315, 316 (2002) (quoting Ringgold v. Black Ent. Television, Inc., 126 F.3d 70, 74 (2d Cir. 1997)).

4. *See* Mitchell v. JCG Indus., Inc., 745 F.3d 837, 841 (7th Cir. 2014).

5. *See generally* Ford v. Am. States Ins. Co., 154 A.3d 237 (Pa. 2017) (applying the doctrine in the context of Motor Vehicle Financial Responsibility Law); Bailey v. Zoning Bd. of Adjustment, 801 A.2d 492 (Pa. 2002) (utilizing the doctrine in the context of zoning issues).

6. *See* Harris v. Time, Inc., 191 Cal. App. 3d 449, 458–60 (1987) (holding that several seconds spent opening envelopes and reviewing their contents is a waste of judicial resources and *de minimis*).

7. Lindow v. United States, 738 F.2d 1057, 1063 (9th Cir. 1984).

8. *See* Kellar v. Summit Seating, Inc., 664 F.3d 169, 176 (7th Cir. 2011).

wage and hour violations.[9] Beyond the FLSA, employers must also comply with state wage and hour laws, which may provide higher protections than the FLSA.[10]

The Pennsylvania Supreme Court recently determined that the *de minimis* doctrine does not apply to state wage and hour claims.[11] The Pennsylvania Supreme Court noted that relying on federal regulations or interpretations of the *de minimis* doctrine is misplaced when interpreting Pennsylvania state law.[12] However, rejecting the *de minimis* doctrine places a large burden on both employees and employers to track and record miniscule amounts of time worked.[13] As a result of this decision, Pennsylvania employers will likely need to acquire technology, such as mobile apps, to properly track off-the-clock work activities and avoid potential state wage and hour claims.[14]

First, this Comment explores the changing employment landscape, federal and state wage and hour law, and the *de minimis* doctrine's history.[15] This Comment then examines the Pennsylvania Supreme Court's rejection of the doctrine's application in state wage and hour claims.[16] This Comment argues that Pennsylvania should not eliminate the *de minimis* doctrine because (1) certain situations warrant the doctrine's use;[17] (2) other jurisdictions have favorably cited to the doctrine or have similarly grappled with its application and conceded its wisdom in employment disputes;[18] and

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9. *See* 29 U.S.C. §§ 206–207 (2021).

10. *See* 29 U.S.C. § 218 (2021). *See, e.g.*, IBP, Inc. v. Alvarez, 546 U.S. 21, 32 (2005) (finding time spent donning nonunique protective gear is *de minimis*).

11. *See In re* Amazon.com, Inc., 255 A.3d 191, 208 (Pa. 2021).

12. *See id.*

13. *See* Anderson v. Mt. Clemens Pottery Co., 328 U.S. 680, 692 (1946).

14. *See* Jason Reisman & Rebecca Reist, *Wage and Hour Takeaways From Pa. Security Check Ruling*, JD SUPRA (Aug. 9, 2021), https://bit.ly/3C8JWmD [http://perma.cc/6HUK-FVMK] (noting that Pennsylvania employers must establish policies instructing employees to record all of their hours worked).

15. *See infra* Section II.

16. *See infra* Section III.

17. *See generally* Ford v. Am. States Ins. Co., 154 A.3d 237 (Pa. 2017) (applying the *de minimis* doctrine in the context of the Motor Vehicle Financial Responsibility Law); Bailey v. Zoning Bd. of Adjustment, 801 A.2d 492 (Pa. 2002) (applying the doctrine in the context of zoning issues); Commonwealth v. Hoffman, 714 A.2d 443 (Pa. Super. Ct. 1998) (reversing judgment of sentence based on the *de minimis* nature of an infraction); Yeakel v. Driscoll, 467 A.2d 1342 (Pa. Super. Ct. 1983) (applying the doctrine to resolve an encroachment issue).

18. *See* Mitchell v. JCG Indus., Inc., 745 F.3d 837, 845 (7th Cir. 2014) ("[T]he *de minimis* rule is alive and well in Illinois's law of employee compensation."). *See generally* Levias v. Pac. Mar. Ass'n, 760 F. Supp. 2d 1036 (W.D. Wash. 2011) (finding the *de minimis* doctrine applicable under Washington law); Troester v. Starbucks Corp., 421 P.3d 1114 (Cal. 2018) (declining to foreclose the doctrine's application as a matter of state law but instead deciding the case based on the facts

(3) applying the doctrine would reduce the number of employment disputes that concern small trifles.[19] Although Pennsylvania has not explicitly adopted the *de minimis* doctrine in its wage orders and labor codes, Pennsylvania should maintain flexibility in considering wage and hour disputes and not foreclose application of the *de minimis* doctrine under Pennsylvania wage and hour law.[20]

I. BACKGROUND

A. The De Minimis Exception: When Should an Employer Pay?

1. A Changed Employment Landscape

Employers use smartphone capabilities to reach employees at any time and any place.[21] Leaving the office is no longer an indicator that an employee has stopped working for the day. People often attempt to balance the demands of work life and home life, but the recent shift toward remote working has further blurred those boundaries.[22] Some employers no longer want to wait to speak with their employees, or perhaps they will forget an important item of discussion if they wait until the next day to address it at the workplace.[23] Many employers send emails or text messages after employees have left work for the day.[24] Employees may respond quickly to those messages simply to cross them off their to-do lists.[25]

Wakefield Research recently surveyed nearly 1,000 office professionals who work remotely. Results suggest that navigating through email inboxes is one of the greatest burdens for the majority (89 percent) of office workers, and over one-third (38 percent) of office workers note that "email fatigue" is a factor pushing them to leave their jobs.[26] Off-the-clock work can cause fatigue and

presented); Piper v. Jones Dairy Farm, 940 N.W.2d 701 (Wis. 2020) (considering application of the doctrine in the collective bargaining context).

19. *See In re* Amazon.com, Inc., 255 A.3d 191, 210 n.2 (Pa. 2021) (Saylor, J., dissenting); *id.* at 213 (Mundy, J., dissenting).

20. *See id.* at 214 (Mundy, J., dissenting).

21. *See* Courtney Bru, *What Exactly is 'de Minimis'? Working Off the Clock in World of E-Mail, Texts*, HR DAILY ADVISOR (Jan. 7, 2019), https://bit.ly/3v6RXaM [https://perma.cc/2JPR-MEUW].

22. *See* Edward Segal, *Survey Finds Email Fatigue Could Lead 38% of Workers to Quit Their Jobs*, FORBES (Apr. 21, 2021, 9:00 AM), https://bit.ly/3B906uA [https://perma.cc/3RCL-E2KR].

23. *See* Bru, *supra* note 21.

24. *See id.*

25. *See id.*

26. *See* Segal, *supra* note 22. Wakefield Research conducted a survey for email platform Superhuman in early 2021 and sent the survey to nearly 1,000 office professionals who were working from home. *See id.* The survey findings suggest

worker dissatisfaction, but are employers obligated to pay for those extra seconds, minutes, or hours spent? The answer depends on (1) whether the employer knew the employee was working off the clock and (2) whether the time spent working was *de minimis*.[27]

2. *Working Off the Clock: The FLSA and Pennsylvania's Minimum Wage Law*

a. The FLSA

The FLSA is the primary federal law regulating compensation, work environment, and hours worked.[28] The Department of Labor's ("DOL") Wage and Hour Division is responsible for the administration and enforcement of the FLSA.[29] Congress passed the FLSA to improve working conditions for the "maintenance of the minimum standard of living . . . and general well-being of workers."[30] The Act establishes a minimum floor for minimum wage that all employers must comply with.[31] The Act also requires employers to pay overtime compensation to employees for any time worked over 40 hours in a week.[32] However, the FLSA also contains a savings clause that allows states to establish and enforce stricter regulations than those contained in the FLSA.[33]

The FLSA requirements apply only to "employees," and employers try to avoid minimum wage and overtime pay laws through misclassifying employees as independent contractors and deducting expenses, among other methods.[34] Employees can sue employers

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that shifting to a remote work setting has led to an increase in digital communications, which in turn, has caused employee burnout and fatigue. *See id.*

27. *See* Bru, *supra* note 21.

28. *See* 29 U.S.C. § 201, *et seq.* (2021); Walsh-Healy Public Contracts Act, 41 U.S.C. § 6502 (2019) (originally enacted in 1936). Prior to the FLSA's enactment, Congress enacted the Walsh-Healy Public Contracts Act to improve working conditions, but courts interpreted the act in a variety of ways and subsequent amendments lessened the Act's impact on worker protections. 41 U.S.C. § 6502 (2019).

29. *See* 29 U.S.C. § 204 (2021).

30. 29 U.S.C. § 202(a) (2021).

31. *See* Bayada Nurses, Inc. v. Dep't of Labor & Indus., 8 A.3d 866, 869 (Pa. 2010); *In re* Amazon.com, Inc., 255 A.3d 191, 198 (Pa. 2021).

32. *See* 29 U.S.C. § 207(a) (2021).

33. *See* 29 U.S.C. § 218(a) (2021).

34. *See* Jennifer J. Lee & Annie Smith, *Regulating Wage Theft*, 94 WASH. L. REV. 759, 765 (2019) (noting that other methods used to commit wage theft include paying a daily or weekly wage and requiring workers to work beyond hours recorded on their timesheets). *See, e.g.*, FedEx Home Delivery v. N.L.R.B., 563 F.3d 492, 503 (D.C. Cir. 2009) (involving misclassification of workers); Ariz. Republic, 349 N.L.R.B. 1040, 1044–45 (2007) (involving misclassification of workers); Argix Direct, Inc., 343 N.L.R.B. 1017, 1020–21 (2004) (involving misclassification of workers); Dial-A-Mattress Operating Corp., 326 N.L.R.B 884, 891 (1998) (involving misclassification of workers).

for FLSA violations.[35] If employers are found liable for FLSA violations, employers may have to pay liquidated damages for unpaid wages and overtime as well as court costs and attorney fees.[36] To avoid costly FLSA violations and ensure that employees are accurately compensated, employers must determine what activities constitute working time and pay employees for all "hours worked."[37]

Although the FLSA does not define the term "work," courts have interpreted "work" to mean any exertion that employers benefit from or any time that employees are required to be on workplace premises regardless of whether those work activities involve exertion.[38] Because of the varying interpretations of what activities constituted working time, Congress subsequently passed the Portal-to-Portal Act ("PTPA"), which prevented employees from receiving compensation for preliminary and postliminary activities.[39] The PTPA excluded preliminary and postliminary activities such as traveling to and from work and changing clothes before and after work.[40] However, the PTPA does not exclude activities that are integral and indispensable to the job, which are activities that employees cannot relinquish if they are to perform and complete their work tasks.[41]

The DOL adopted regulations making work activities compensable and codifying the *de minimis* doctrine.[42] The DOL recognized that employers face administrative burdens in having to monitor off-the-clock work and that the amount of time spent on off-the-clock work varies greatly.[43] Because of these circumstances, the DOL recognized the need for a doctrine allowing employers to dis-

35. *See* 29 U.S.C. § 216(b) (2021).

36. *See id.*

37. *See* 29 U.S.C. § 203(o) (2021). *See generally* Integrity Staffing Sols., Inc. v. Busk, 574 U.S. 27, 31 (2014); Anderson v. Mt. Clemens Pottery Co., 328 U.S. 680, 692–94 (1946); Armour & Co. v. Wantock, 323 U.S. 126, 132–33 (1944); De Asencio v. Tyson Foods, Inc., 500 F.3d 361, 367 (3d Cir. 2007).

38. *See Integrity Staffing Sols., Inc.*, 574 U.S. at 31; *Anderson*, 328 U.S. at 692–94; *Armour & Co.*, 323 U.S. at 132–33; *De Asencio*, 500 F.3d at 367.

39. *See* 29 U.S.C. § 254(a)(2) (2021).

40. *See* 29 U.S.C. §§ 203(o), 254 (2021).

41. *See* 29 U.S.C. § 254(a). *See generally Integrity Staffing Sols., Inc.*, 574 U.S. at 30.

42. *See* 29 C.F.R. § 785.47 (2021) ("[I]nsubstantial or insignificant periods of time beyond the scheduled working hours, which cannot as a practical administrative matter be precisely recorded for payroll purposes, may be disregarded. . . . [S]uch trifles are de minimis."); U.S. Dep't of Labor, Wage & Hour Div., Opinion Letter FLSA2004–8NA at 1 (Aug. 12, 2004).

43. *See* 29 C.F.R. § 785.47 (2021).

regard—and not compensate—work activities that take an insubstantial amount of time.[44]

b. Pennsylvania's Minimum Wage Law

States enact laws to require routine payment of wages and to prohibit employers from making unlawful pay deductions.[45] In Pennsylvania, the Pennsylvania Minimum Wage Act ("PMWA") requires payment of minimum wage and overtime.[46] The PMWA requires state minimum wage to meet the FLSA's minimum wage.[47] Both the PMWA and the FLSA require employers to pay non-exempt employees time and a half for hours worked over 40 in a week.[48]

The general rule is that employers must pay for work that occurs off the clock—work that occurs outside of scheduled working hours.[49] The FLSA requires employers to compensate employees for off-the-clock work if an "employer knows or has reason to believe that [the employee] is continuing to work and the time is working time."[50] Like the FLSA, Pennsylvania wage and hour law requires employers to compensate employees for off-the-clock work if employers knew or had reason to know that employees completed work.[51] The reason for the work is immaterial.[52] Rather, what matters is that employees are compensated for all off-the-clock work.[53]

3. Working Off the Clock: Was It De Minimis Work?

Addressing whether an employee's time spent working off the clock is *de minimis* is much more complex.[54] An exploration of the doctrine's inception, test used, and application in federal and state courts will provide context in answering this question.

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44. *See id.*
45. *See* 29 U.S.C. § 218(a) (2021).
46. *See* 43 PA. STAT. ANN. § 333.101 (2021).
47. *See* 43 PA. STAT. ANN. § 333.104(a.1) (2021).
48. *See* 43 PA. STAT. ANN. § 333.104(c) (2021); 29 U.S.C. §§ 206–207 (2021).
49. *See* 29 C.F.R. § 785.11 (2021).
50. *Id. See generally* Handler v. Thrasher, 191 F.2d 120 (10th Cir. 1951); Republican Publ'g Co. v. Am. Newspaper Guild, 172 F.2d 943 (1st Cir. 1949); Kappler v. Republic Pictures Corp., 59 F. Supp. 112 (S.D. Iowa 1945), *aff'd* 151 F.2d 543 (8th Cir. 1945); Republic Pictures Corp. v. Kappler, 327 U.S. 757 (1946); Hogue v. Nat'l Auto. Parts Ass'n, 87 F. Supp. 816 (E.D. Mich. 1949).
51. fcis]See 34 PA. CODE § 231.1 (2022).
52. *See* 29 C.F.R. § 785.11 (2021).
53. *See id.*
54. *See* Bru, *supra* note 21.

a. The *De Minimis* Doctrine's Inception

The *de minimis* doctrine was first endorsed and used in the context of wage and hour law in *Anderson v. Mount Clemens Potter Co.*[55] In *Anderson*, the U.S. Supreme Court recognized that employers are required to track employees' hours worked.[56] However, the Court also cited to the "realities of the industrial world" and noted that a *de minimis* rule could be applied when the employees' pre-scheduled working time was negligible.[57] The Court further noted that "split-second absurdities" should not be recorded in light of both the realities of working conditions and the policy of the FLSA.[58] The Court did not define what constituted negligible working time, but it proffered that mere seconds or minutes of work beyond what was scheduled could be considered "trifles" that could be disregarded and classified as *de minimis*.[59]

b. Test for *De Minimis*

Federal courts often analyze three factors—the *Lindow* factors—when determining whether compensable time is *de minimis*: "(1) the practical administrative difficulty of recording the additional time; (2) the aggregate amount of compensable time; and (3) the regularity of the additional work."[60] When more than one factor is present, a court is more likely to apply the doctrine.[61] While courts have varied greatly on what constitutes *de minimis* time, some federal courts have found that 10 minutes a day could be dis-

55. Anderson v. Mt. Clemens Pottery Co., 328 U.S. 680, 692–94 (1946). Factory employees claimed that their employer violated provisions of the FLSA. *Id.* at 682. Employees alleged that they worked off the clock for approximately 56 minutes every day and did not receive compensation for this time. *Id.* at 684.

56. *See id.* at 692.

57. *Id.*

58. *Id.*

59. *Id.*

60. Lindow v. United States, 738 F.2d 1057, 1063 (9th Cir. 1984). The Ninth Circuit laid out this test when analyzing the *de minimis* doctrine. *Id.* Most circuits use these factors—the *Lindow* factors—when assessing the applicability of the doctrine. *See, e.g.*, Kosakow v. New Rochelle Radiology Assocs., P.C., 274 F.3d 706, 719 (2d Cir. 2001); Perez v. Mountaire Farms, 650 F.3d 350, 373–74 (4th Cir. 2011); Brock v. Cincinnati, 236 F.3d 793, 804–05 (6th Cir. 2001); Reich v. Monfort, Inc., 144 F.3d 1329, 1333–34 (10th Cir. 1998). *See generally* Alan Persaud, *Just A Minute, Isn't That De Minimis: California Should Not Burden or Require National Employers to Compensate Employees For De Minimis Off-The-Clock Work Activities*, 14 FIU L. REV. 121, 131–32 (2020).

61. *See* Jim Nicholas, *Employers Must See Big Picture Around 'De Minimis' Time*, WORKFORCE: HR ADMIN. (Dec. 19, 2012), https://bit.ly/3kHYG52 [https://perma.cc/BFS9-GKSK].

regarded as *de minimis* time.[62] While there are justifications for disregarding small amounts of time worked, many workers do not find this time spent to be a "trifle."[63]

c. The *De Minimis* Doctrine's Application

The *de minimis* doctrine applies in various off-the-clock claims.[64] Courts look to the amount of *Lindow* factors present and the factual circumstances of the off-the-clock claim when analyzing claims.[65] Examples of *de minimis* off-the-clock work activities include waiting for a computer to load or waiting to log onto a computer network.[66] These activities are considered *de minimis* because they take only a minute.[67] Because these activities are of short duration and can vary in time spent, it is difficult for an employee to track and record the time that each activity took.[68]

However, when the activities become a regular part of an employee's workload or the compensable time in the aggregate is sub-

62. *See, e.g.*, Green v. Planters Nut & Chocolate Co., 177 F.2d 187, 188 (4th Cir. 1949) (holding that 10 minutes was *de minimis*); E.I. Du Pont De Nemours & Co. v. Harrup, 227 F.2d 133, 135–36 (4th Cir. 1955) (holding that 10 minutes was *de minimis*); Carter v. Pan. Canal Co., 314 F. Supp. 386, 392 (D.C. 1970) (holding that 2 to 15 minutes was *de minimis*).

63. *See, e.g.*, Troester v. Starbucks Corp., 421 P.3d 1114, 1117 (Cal. 2018) (noting plaintiff claimed over $100 was owed to him as a result of being denied wages for small amounts of time worked over the course of 17 months); *In re* Amazon.com, Inc., 255 A.3d 191, 193 (Pa. 2021) (discussing plaintiffs' claims for compensation of undergoing antitheft security screenings, which included metal detectors, searches of bags and other personal items, and "a secondary screening process if the metal detector's alarm sounded").

64. *See, e.g.*, IBP, Inc. v. Alvarez, 546 U.S. 21, 30 (2005) (putting on protective gear); *In re* Amazon.com, Inc., 255 A.3d 191, 193 (Pa. 2021) (undergoing security screening); Corbin v. Time Warner Ent.-Advance/Newhouse P'ship, 821 F.3d 1069, 1073 (9th Cir. 2016) (spending time loading a computer before logging into timekeeping system).

65. *See, e.g.*, Kellar v. Summit Seating Inc., 664 F.3d 169, 176 (7th Cir. 2011) (involving factory work); *Perez*, 650 F.3d at 373–74 (involving donning and doffing protective gear); *Lindow*, 738 F.2d at 1063 (involving pre-shift activities such as reviewing log book and exchanging information and opening and closing of gates); De Asencio v. Tyson Foods, Inc., 500 F.3d 361, 374 (3d Cir. 2007) (involving donning and doffing protective gear); *Kosakow*, 274 F.3d at 719 (involving preparatory work as radiation technologist); *Brock*, 236 F.3d at 804–05 (involving canine care work); *Reich*, 144 F.3d 1333–34 (involving donning and doffing protective gear); Corbin v. Time Warner Ent.-Advance/Newhouse P'ship, 821 F.3d 1069, 1081 (9th Cir. 2016) (involving logging into computer program); Singh v. New York, 524 F.3d 361, 371–72 (2d Cir. 2008) (involving commuting time while carrying inspection documents).

66. *See* Chambers v. Sears, 428 F. App'x 400, 418 (5th Cir. 2011).

67. *See id.* at 404.

68. *See id.*

stantial, then the hours worked are not *de minimis*.[69] For example, courts have found that when employees spent a few seconds or minutes answering emails after work hours and employers had knowledge that employees were engaging in these work activities, the *de minimis* doctrine did not apply.[70]

While other courts have classified time spent passing through security lines or bag checks as *de minimis*,[71] the Pennsylvania Supreme Court departed from this finding and recently held that all time spent by employees waiting to undergo, and undergoing, security screenings are considered hours worked under the PMWA.[72] Through its decision in *In re Amazon.com, Inc.*, the Pennsylvania Supreme Court pronounced that the PMWA is more protective of employees than the FLSA.[73]

B. The Pennsylvania Supreme Court's Decision in In re Amazon.com, Inc.

1. Hours Worked Under the PMWA

The PMWA does not define the term "hours worked," but the Pennsylvania Department of Labor and Industry promulgated regulations that define the term as follows:

> Hours worked—The term includes time during which an employee is required by the employer to be on the premises of the employer, to be on duty or to be at the prescribed work place, time spent in traveling as part of the duties of the employee during normal working hours and time during which an employee is employed or permitted to work; provided, however, that time allowed for meals shall be excluded unless the employee is required or permitted to work during that time, and provided further, that time spent on the premises of the employer for the convenience of the employee shall be excluded.[74]

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69. *See* Jeffrey Brecher & Eric Magnus, *Managing Wage and Hour Risks in a Digitally Connected Workforce Addicted to Technology*, 20 J. INTERNET L. 3, 6–7 (2017); Persaud, *supra* note 60, at 133.

70. *See, e.g.*, Gomley v. Crossmark, Inc., No. 1:13-CV-00420, 2015 U.S. Dist. LEXIS 54037, at *6 (D. Idaho Apr. 22, 2015) (determining that when employees were required to look at e-mails and sync devices, among other activities, they were occupied in non-*de minimis* work activity).

71. *See* Busk v. Integrity Staffing Sols., Inc., 713 F.3d 525, 532 (9th Cir. 2013).

72. *See In re* Amazon.com, Inc., 255 A.3d 191, 193 (Pa. 2021). *See generally* Reisman & Reist, *supra* note 14.

73. *See generally* Reisman & Reist, *supra* note 14.

74. 34 PA. CODE § 231.1. *See In re Amazon.com, Inc.*, 255 A.3d at 198–99 n.8. "Pennsylvania Attorney General Josh Shapiro . . . filed an *amicus* brief in support of Employees." *Id.* He noted that "when the legislature adopted the PMWA in 1968 it was aware of the federal PTPA, but pointedly did not include its limitations

The Pennsylvania Supreme Court applied this provision to the case at hand and emphasized that this definition of "hours worked" also applied to the PMWA.[75] In applying the regulation, the court ruled that Amazon employees who were required to undergo antitheft security screenings at the end of their shifts should be compensated for *all* time worked under the PMWA.[76] The antitheft security screenings included metal detectors, searches of bags and other personal items, and a secondary screening process if the metal detector sounded.[77] The court held that employees should be compensated regardless of whether they were performing job-related tasks while on the premises.[78]

Before this discussion, however, the court commented on the U.S. Supreme Court's previous holding that the time Amazon workers spent going through the same security screenings was not compensable under the definition of "hours worked" in the FLSA because of the amendments the federal PTPA made to the FLSA.[79] The court also mentioned that Pennsylvania never adopted the PTPA's amendments to the FLSA and cited two of its prior decisions finding that the FLSA "establishes only a national floor under which wage protections cannot drop, but more generous protections provided by a state are not precluded."[80]

2. Rejecting the De Minimis Exception

The Pennsylvania Supreme Court did not stop there. In its decision, the court also addressed whether Pennsylvania recognizes a *de minimis* doctrine to claims under the PMWA.[81] The court referenced the U.S. Supreme Court's decision in *Anderson* but noted that the DOL subsequently issued a regulation setting limits on an

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in our wage and hour laws . . . ." *Id.* The Bureau of Labor and Industry has the responsibility of enforcing the PMWA and defined the term "hours worked" when promulgating 34 PA. CODE § 231.1 in 1977. *Id.*

75. *See In re Amazon.com, Inc.*, 255 A.3d at 197.

76. *See id.* at 203–04.

77. *See id.* at 203.

78. *See id.*

79. *See In re Amazon.com, Inc.*, 255 A.3d at 194; 29 U.S.C. § 254(a)(2). *See generally* Integrity Staffing Solutions v. Busk, 574 U.S. 27 (2014); Adam Long & Austin Wolfe, *Pennsylvania Supreme Court Widens the Gap Between PA and Federal Overtime Laws, Creating More Compliance Challenges for PA Employers*, JD SUPRA (July 29, 2021), https://bit.ly/3m6GVxp [https://perma.cc/5SP4-DMA2].

80. *In re Amazon.com, Inc.*, 255 A.3d at 201. *See* Chevalier v. Gen. Nutrition Ctrs., Inc., 220 A.3d 1038, 1049 (Pa. 2019); Bayada Nurses, Inc. v. Dep't of Lab. & Indus., 8 A.3d 866, 883 (Pa. 2010).

81. *See In re Amazon.com, Inc.*, 255 A.3d at 204–09.

employer's use of the *de minimis* doctrine.[82] The court found this regulation to reflect the views of the DOL. For the employee's time to be considered *de minimis*, "it must truly be a triflingly small interval of an uncertain and indefinite duration, such that it cannot, as a matter of administrative practicality, be precisely recorded by the employer for purposes of compensating the employee."[83] The court also reflected on the U.S. Supreme Court's decision in *Sandifer v. U.S. Steel Corp.* and indicated that this decision may have signaled the Court's discomfort with continuing the application of the *de minimis* doctrine to cases brought under the FLSA.[84]

The Pennsylvania Supreme Court ultimately declined to recognize the *de minimis* doctrine and found no amount of time worked to be a "mere trifle" that should not be counted or compensated for.[85] The court explained that it has never utilized the *de minimis* doctrine in its interpretation of PMWA provisions or Pennsylvania Department of Labor and Industry regulations.[86] The court also emphasized that the General Assembly never intended to allow a *de minimis* exception to the PMWA because the language requiring payment for "all hours worked" signifies its intent for workers to be compensated for any portion of the hours worked.[87]

3. Implications of In re Amazon.com, Inc.'s Decision

Following this decision, Pennsylvania employers must compensate their employees for all time spent on work premises regardless of (1) whether those employees are performing job-related tasks and (2) the duration of time spent on those tasks.[88] This holding not only pertains to security screenings but also applies to other activities that employers require nonexempt employees to engage in,

82. *See id.*; 29 C.F.R. § 785.47 (establishing limits on an employer's use of the *de minimis* doctrine in determining the amount of time an employee worked to determine the compensation owed to the employee under the FLSA).

83. *In re Amazon.com, Inc.*, 255 A.3d at 207.

84. *See id.*; Sandifer v. U.S. Steel Corp., 571 U.S. 220 (2014). The U.S. Supreme Court was asked to determine whether the time employees spent donning and doffing protective gear that their employer requires was compensable under the FLSA. *Id.* at 222–23. The Court contemplated the relevance of the *de minimis* doctrine in the interpretation of the FLSA in this case but ultimately held that the time spent on those activities was excluded from the FLSA's definition of hours worked. *Id.* at 234.

85. *See In re Amazon.com, Inc.*, 255 A.3d at 209; 43 PA. STAT. AND CONS. STAT. § 333.104 (West 2021).

86. *See In re Amazon.com, Inc.*, 255 A.3d at 208; 43 PA. STAT. AND CONS. STAT. § 333.104 (West 2021).

87. *See In re Amazon.com, Inc.*, 255 A.3d at 209; 43 PA. STAT. AND CONS. STAT. § 333.104 (West 2021).

88. *See generally* Reisman & Reist, *supra* note 14.

such as changing clothes or setting up and tearing down equipment.[89]

Pennsylvania employers need to ensure their policies require employees to record all hours worked regardless of whether that time is within their scheduled hours.[90] Beyond creating or revising policies to ensure employees' hours are recorded, employers must communicate these policies to their employees and monitor for compliance.[91]

C. Pennsylvania Following California's Lead?

Before Pennsylvania's decision in *In re Amazon.com, Inc.*, California was the first and only state to refuse to apply the *de minimis* doctrine to state wage and hour claims.[92] States along the west coast and northeast notoriously have laws that favor employees.[93] However, Pennsylvania traditionally has not been categorized as an employee-friendly state.[94] This pinnacle decision illustrates a significant shift toward developing more employee-friendly state laws or perhaps an attempt to follow in California's footsteps.

In *Troester v. Starbucks Corp.*, the California Supreme Court held that employees must be compensated for off-the-clock activities, such as locking a door or activating an alarm.[95] In *Troester*, a former shift supervisor filed a class action suit against Starbucks, under California law, on behalf of California employees in nonmanagerial roles who had to follow store closing procedures.[96] Employees were required to clock out before starting the store closure procedures, which included activating the alarm, exiting the store, locking the front door, and walking coworkers to their vehicles.[97] The former supervisor claimed over $100 was owed to him as a re-

89. *See id.*

90. *See id.*

91. *See id.* Monitoring for compliance could potentially lead to employee surveillance issues. *See Managing Workplace Monitoring and Surveillance*, SHRM (Mar. 13, 2019), https://bit.ly/3u6XY5u [https://perma.cc/6TBL-82EV] (discussing how workplace monitoring is subject to various federal and state constitutional provisions and laws as a result of employee privacy rights).

92. *See* Troester v. Starbucks Corp., 421 P.3d 1114, 1125 (Cal. 2018). *See generally* Persaud, *supra* note 60, at 135.

93. *See* Melissa Shin & Rebecca Koenig, *Interactive Map: Best States for Workers Rights*, U.S. NEWS (Aug. 28, 2018, 2:54 PM), https://bit.ly/3GeMNwt [https://perma.cc/A47U-S6VT].

94. *See id.*

95. *See Troester*, 421 P.3d at 1117, 1125.

96. *See id.* at 1116.

97. *See id.* at 1117.

sult of being denied wages for these small amounts of time worked over the course of 17 months.[98]

The court recognized that it may be difficult to track all hours worked in some situations.[99] It also noted the employer should be the one to bear that burden—not the employee—and technological advances may help with recording and tracking short durations of time.[100] The California Supreme Court ruled that the *de minimis* doctrine did not apply to *Troester* and California's wage and hour law did not recognize the *de minimis* doctrine.[101]

II. ANALYSIS

A. Pennsylvania Should Not Eliminate the De Minimis Exception Under the PMWA Because of the Utility of the Doctrine and Its Roots in Pennsylvania Law

The *de minimis* doctrine has ancient roots and broad application.[102] The doctrine's breadth makes it difficult to determine or categorize circumstances in which its application is appropriate.[103] However, the policy reasoning behind the doctrine is generally similar amongst courts: to prevent the judicial system from being overwhelmed with trivial matters and to conserve judicial resources.[104] In her dissenting opinion in *In re Amazon.com, Inc.*, Justice Mundy stated that "[the doctrine] serves as a tool, meant to aid in distinguishing the judicious application of broad statutory language in circumstances considered trifling or inconsequential."[105]

Justice Mundy further pointed out that the Pennsylvania Supreme Court recognized that Pennsylvania law:

> [P]ermits the qualification implied in the ancient maxim . . . Where there are irregularities of very slight consequence, it does not intend that the infliction of penalties should be inflexibly severe. If the deviation were a mere trifle, which, if continued in

98. *See id.* at 1125.

99. *See id.*

100. *See Troester*, 421 P.3d at 1125.

101. *See id.*

102. *See* Sandifer v. U.S. Steel Corp., 571 U.S. 220, 234 (2014) ("Although the roots of the *de minimis* doctrine stretch to ancient soil, its application . . . began with *Anderson*.").

103. *See* Nemeorfsky, *supra* note 3, at 324.

104. *See id.*

105. *In re* Amazon.com, Inc., 255 A.3d 191, 211 (Pa. 2021) (Mundy, J., dissenting). *See* Nemeorfsky, *supra* note 3, at 324 (discussing the policy reasons behind the doctrine, including "to save on judicial resources and prevent the system from getting bogged down with trifling or inconsequential matters").

> practice, would weigh little or nothing on the public interest, it might be properly overlooked.[106]

The judiciary is charged with reading and interpreting Pennsylvania law, and application of the *de minimis* doctrine depends on such interpretation.[107] When enacting legislation, the General Assembly should be familiar with extant law according to the Statutory Construction Act.[108] Considering that Pennsylvania's *de minimis* doctrine predates the PMWA's enactment, it is not surprising that the General Assembly did not denote a *de minimis* exception when drafting the statute.[109] Thus, application of this doctrine under the PMWA is evident based on how the judiciary is charged with reading Pennsylvania law.[110]

Moreover, Pennsylvania previously recognized the doctrine in a variety of contexts.[111] For example, the Pennsylvania Supreme Court has recognized the *de minimis* doctrine in zoning issues[112] and in the context of the Motor Vehicle Financial Responsibility Law.[113] The Commonwealth Court and Superior Court have also applied the doctrine in zoning disputes[114] as well as in other contexts.[115] Because of the policy reasoning behind the *de minimis* doctrine and its roots in Pennsylvania statutory and case law, the doctrine should continue to be applied under the PMWA.

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106. Bristol-Myers Co. v. Lit Bros., 6 A.2d 843 (1939) (quoting 2 Dods, Adm. R. 269, 270).

107. *See* 1 PA. STAT. AND CONS. STAT. ANN. § 1921 (West 2021).

108. *See id.* at (c).

109. *See In re Amazon.com, Inc.*, 255 A.3d at 211 (Mundy, J., dissenting opinion).

110. *See id.*

111. *See, e.g.*, Ford v. Am. States Ins. Co., 154 A.3d 237 (Pa. 2017) (involving the Motor Vehicle Financial Responsibility Law); Bailey v. Zoning Bd. of Adjustment, 801 A.2d 492 (Pa. 2002) (involving zoning); Commonwealth v. Hoffman, 714 A.2d 443 (Pa. 1998) (involving criminal sentencing); Yeakel v. Driscoll, 467 A.2d 1342 (Pa. Super. Ct. 1982) (involving encroachment).

112. *See, e.g.*, Bailey v. Zoning Bd. of Adjustment, 801 A.2d 492 (Pa. 2002).

113. *See, e.g.*, Ford v. Am. States Ins. Co., 154 A.3d 237 (Pa. 2017).

114. *See, e.g.*, Lench v. Zoning Bd. of Adjustment, 13 A.3d 576 (Pa. Commw. Ct. 2011); Constantino v. Zoning Hearing Bd., 618 A.2d 1193 (Pa. Commw. Ct. 1992).

115. *See, e.g.*, Commonwealth v. Hoffman, 714 A.2d 443 (Pa. Super. Ct. 1998) (reversing judgment of a sentence based on the infraction's *de minimis* nature); Yeakel v. Driscoll, 467 A.2d 1342 (Pa. Super. Ct. 1983) (utilizing the *de minimis* doctrine to determine an encroachment problem).

B. Pennsylvania Should Not Eliminate the De Minimis Exception Because Other Jurisdictions Have Favorably Cited to the Doctrine in the Realm of Wage and Employment Disputes

Other jurisdictions continue to apply the *de minimis* doctrine.[116] For example, Kentucky case law recognizes the *de minimis* doctrine in various contexts.[117] A court found that the *de minimis* defense was not a "creature of the FLSA," but instead a doctrine with ancient roots in Kentucky common law.[118] Wisconsin has also favorably cited the doctrine,[119] and Wisconsin's highest court applied the *de minimis* doctrine to state wage and hour claims even though the court stated there was no explicit basis for applying the *de minimis* doctrine.[120]

Both Illinois and Washington courts continue to apply and favorably cite the doctrine when applying labor and employment laws to a dispute.[121] Interestingly, these jurisdictions define "hours worked" in a similar manner to Pennsylvania.[122] Illinois courts apply the following definition of "hours worked": "all the time an employee is required to be on duty, or on the employer's premises, or at other prescribed places of work, and any additional time he or she is required or permitted to work for the employer."[123] The Washington Department of Labor and Industry promulgated a regulation which states that "'[h]ours worked' shall be considered to mean all hours during which the employee is authorized or required

116. *See, e.g.*, Mitchell v. JCG Indus., Inc., 745 F.3d 837, 845 (7th Cir. 2014) (stating that "the de minimis rule is alive and well in Illinois' law of employee compensation").

117. *See* England v. Advance Stores Co., 263 F.R.D. 423, 444 (W.D. Ky. 2009); Bartoszewski v. Vill. of Fox Lake, 269 Ill. App. 3d 978, 982–85 (2d Cir. 1995); Munson v. White, 217 S.W.2d 641, 642 (Ky. Ct. App. 1949); J.N. Youngblood Truck Lines v. Hatfield, 201 S.W.2d 567, 571–72 (Ky. Ct. App. 1947); Clark v. Mason, 95 S.W.2d 292, 296 (Ky. Ct. App. 1934).

118. *England*, 263 F.R.D. at 444.

119. *See e.g.*, Waupaca Cty. v. Bax, 323 Wis. 2d 824, 824 (Ct. App. 2010) (involving zoning); Town of Delavan v. City of Delavan, 176 Wis. 2d 516, 532 (1993) (involving annexation).

120. *See* United Food & Commercial Workers Union, Local 1473 v. Hormel Foods Corp., 367 Wis. 2d 131, 162–64 (2016).

121. *See Mitchell*, 745 F.3d at 844 (7th Cir. 2014); Levias v. Pac. Mar. Ass'n, 760 F. Supp. 2d 1036, 1057–58 (W.D. Wash. 2011) (finding the *de minimis* doctrine applicable under Washington law).

122. *See* ILL. ADMIN. CODE tit. 56, § 210.110 (2021); WASH. ADMIN. CODE § 296-126-002(8) (2021).

123. *Compare* ILL. ADMIN. CODE tit. 56, § 210.110 (2021), *with* 34 PA. CODE § 231.1 (defining "hours worked" in a similar manner).

by the employer to be on duty on the employer's premises or at a prescribed work place."[124]

Other jurisdictions have also grappled with the doctrine's application and still find logic in maintaining an exception to wage and employment issues.[125] As mentioned in Section II, California was the first and only state to refuse application of the *de minimis* doctrine in state wage and hour claims.[126] However, the California Supreme Court declined to foreclose the doctrine's application as a matter of state law.[127]

In *Troester*, several concurring opinions highlighted the logic in applying the *de minimis* exception to wage and employment issues even where the law was enacted to benefit and protect California employees.[128] Justice Cuéllar noted:

> As easily available technologies can increasingly track our every movement and moment, California law still protects workers from being forced to undertake work that won't be paid. That protection is not diluted if it remains possible for employers to argue against liability for moments so fleeting that they are all but imperceptible.[129]

Justice Kruger also stated:

> [T]he law also recognizes that there may be some periods of time that are so brief, irregular of occurrence, or difficult to accurately measure or estimate, that it would neither be reasonable to require the employer to account for them nor sensible to devote judicial resources to litigating over them.[130]

Although the Justices did not recommend that the court officially adopt the *de minimis* doctrine, they emphasized that application of the doctrine is appropriate when the negligible time is small or difficult to track.[131]

The Wisconsin Supreme Court has also grappled with and considered the application of the *de minimis* doctrine. In *Piper v. Jones Dairy Farm*, the court found that the time spent donning and dof-

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124. WASH. ADMIN. CODE § 296-126-002(8) (2021).

125. *See, e.g.*, Troester v. Starbucks Corp., 421 P.3d 1114 (Cal. 2018); Piper v. Jones Dairy Farm, 940 N.W.2d 701 (Wis. 2020).

126. *See infra* Section II; *Troester*, 421 P.3d at 1114.

127. *See Troester*, 421 P.3d at 1116.

128. *See id.* at 1126 (Cuéllar, J., concurring opinion); *id.* at 1129 (Kruger, J., concurring opinion).

129. *Id.* at 1129 (Cuéllar, J., concurring opinion).

130. *Id.* at 1130 (Kruger, J., concurring opinion).

131. *See id.* at 1126 (Cuéllar, J., concurring opinion); *id.* at 1130 (Kruger, J., concurring opinion).

fing protective gear, approximately eight minutes, was compensable under a collective bargaining agreement between unionized workers and the employer.[132] Although the court concluded that the time was not *de minimis* in nature, the court acknowledged the doctrine's relevance in this dispute and explained it "assume[d] without deciding that the de minimis doctrine applies to claims" arising under Wisconsin law.[133] Several Justices, however, wrote dissenting opinions recommending that the court officially adopt the *de minimis* doctrine.[134]

In her dissenting opinion in *In re Amazon.com, Inc.*, Pennsylvania Supreme Court Justice Mundy found the fact that other jurisdictions have wrestled with applying the doctrine under federal and state law and have "conceded [the doctrine's] wisdom in wage and employment disputes" to be persuasive.[135] While this doctrine should only be used in extremely limited situations where employers prove that time is incapable of being recorded, it should not have been altogether foreclosed on because the PMWA was enacted to benefit and protect Pennsylvania employees.[136] Pennsylvania should not eliminate the *de minimis* doctrine altogether because other jurisdictions define "hours worked" in a similar manner to Pennsylvania and have favorably cited and applied the doctrine in the context of labor and employment laws.

C. *Pennsylvania Should Not Eliminate the De Minimis Exception Because the Doctrine Creates a Barrier From Limitless Employment Disputes*

Through Pennsylvania's rejection of the *de minimis* doctrine, plaintiffs are now incentivized to bring wage claims under the PMWA rather than under the FLSA,[137] which leaves Pennsylvania employers with even fewer defenses against off-the-clock claims.[138] Applying the *de minimis* exception to the PMWA would create a barrier to the potentially endless number of disputes employers may face for the "mere trifles" employees expect to be compen-

132. *See* Piper v. Jones Dairy Farm, 940 N.W.2d 701, 703 (Wis. 2020).

133. *Id.*

134. *See id.* at 714 (Ziegler, J., dissenting opinion); *id.* at 721 (Bradley, J., dissenting opinion).

135. *In re* Amazon.com, Inc., 255 A.3d 191, 213 (Pa. 2021) (Mundy, J., dissenting).

136. *See id.*

137. *See* Long & Wolfe, *supra* note 79.

138. *See id.*

sated for.[139] Through foreclosing application of the *de minimis* doctrine, Pennsylvania employers will confront lawsuits and penalties for failing to compensate employees even for a few seconds or minutes of work.[140]

To prevent pending lawsuits and costly litigation, employers could shift the time-tracking burden to employees to ensure they track their own time accurately. However, this would require a great deal of trust between employers and employees, which likely is not a reasonable solution. Another possibility would require employers to acquire highly advanced timekeeping systems.[141] But is acquiring this technology feasible for every employer? Small business owners, among other employers, would have to bear the cost of the timekeeping systems, which might not be reasonable or attainable.[142] The *de minimis* exception allows employers to waive the burdensome task of tracking all employees' time worked as many timekeeping systems have difficulty capturing every minute, second, and millisecond worked.[143]

CONCLUSION

While the *de minimis* doctrine is a defense for employers, it is not employer-friendly; instead, it balances both employer and employee interests.[144] Although Pennsylvania has not explicitly adopted the *de minimis* doctrine in its wage orders and labor codes, Pennsylvania should maintain flexibility in considering wage and hour disputes and not foreclose application of the *de minimis* doctrine under Pennsylvania wage and hour law.[145]

Before the Pennsylvania Supreme Court's decision in *In re Amazon.com, Inc.*, California was the first and only state to refuse

139. *See In re Amazon.com, Inc.*, 255 A.3d at 213 (noting "[i]n addition to comporting with our law, applying the de minimis doctrine to the PMWA would curb the 'limitless range of probable disputes' an employer may face for the small trifles it is exposed to under the majority's decision").

140. *See* Long & Wolfe, *supra* note 79.

141. *See* Troester v. Starbucks Corp., 421 P.3d 1114, 1125 (Cal. 2018).

142. *See generally* Judyth W. Pendell & Paul J. Hinton, *Tort Liability Costs for Small Businesses*, U.S. CHAMBER INST. LEGAL REFORM (May 2007), https://bit.ly/3oQcRGi [https://perma.cc/SM99-55UM].

143. *See* 29 C.F.R. § 785.47 (2021); Corbin v. Time Warner Ent.-Advance/Newhouse P'ship, 821 F.3d 1069, 1082 (9th Cir. 2016).

144. *See* Rutti v. Lojack Corp., 596 F.3d 1046, 1057 (9th Cir. 2010) (applying the test set forth in *Lindow* because "[the court] recognize[d] that the test reflects a balance between requiring an employer to pay for activities it requires of its employees and the need to avoid 'split-second absurdities' that 'are not justified by the actuality of the working conditions'").

145. *See In re* Amazon.com, Inc., 255 A.3d 191, 214 (Pa. 2021) (Mundy, J., dissenting).

to apply the *de minimis* doctrine to state wage and hour claims.[146] Regardless of its intention, Pennsylvania should not have followed in California's footsteps in this decision and should apply the *de minimis* doctrine in off-the-clock claims, especially in cases where *Lindow* factors are present.[147] To negate the effects of *In re Amazon.com, Inc.*, the Pennsylvania legislature should consider amending the PMWA to explicitly adopt the *de minimis* doctrine. Both federal and state courts apply the *de minimis* doctrine to wage and hour claims—the doctrine is a general principle and not simply a federal rule.[148]

Pennsylvania has now opened the floodgates to countless claims that concern trivial amounts of previously considered *de minimis* time.[149] Application of the doctrine to state wage and hour claims will prevent employers from being bombarded with a myriad of trivial disputes.[150] Pennsylvania should adopt the *de minimis* doctrine and find that it applies to state wage and hour claims. Because of the burden it places on both employers and employees, Pennsylvania should not require employers to compensate employees for off-the-clock activities that take minimal amounts of time and are difficult to track and capture.[151]

146. *See* Troester v. Starbucks Corp., 421 P.3d 1114, 1125 (Cal. 2018). *See generally* Persaud, *supra* note 60, at 135–36.

147. *See* Lindow v. United States, 738 F.2d 1057, 1063 (9th Cir. 1984).

148. *See, e.g.*, Anderson v. Mt. Clemens Pottery Co., 328 U.S. 680, 692 (1946); Mitchell v. JCG Indus., Inc., 745 F.3d 837, 845 (7th Cir. 2014) ("[T]he *de minimis* rule is alive and well in Illinois' law of employee compensation."); Levias v. Pac. Mar. Ass'n, 760 F. Supp. 2d 1036, 1057–58 (W.D. Wash. 2011) (finding the *de minimis* doctrine applicable under Washington law).

149. *See In re* Amazon.com, Inc., 255 A.3d 191, 213 (Pa. 2021) (Mundy, J., dissenting).

150. *See In re* Amazon.com, Inc., 255 A.3d 191, 210 n.2 (Pa. 2021) (Saylor, J., dissenting); *id.* at 213 (Mundy, J., dissenting).

151. *See* 29 C.F.R. § 785.47 (2021).

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