



The U.S. Court of Appeals for the Ninth Circuit issued an [opinion](#) in *Cariene Cadena v. Customer Connexx LLC* on July 10, 2024, reversing the U.S. District Court for the District of Nevada's summary judgment ruling in favor of employer Customer Connexx (Connexx).

The Ninth Circuit held that (1) the *de minimis* doctrine remains applicable to workers' claims for overtime wages under 29 U.S.C. §207; and (2) triable issues of material fact remained as to whether the time claimed by Connexx employees was *de minimis*.

The case involves Nevada call center workers who allege that Connexx violated the Fair Labor Standards Act (FLSA) by failing to pay employees overtime wages for time spent booting up and shutting down their computers each day. On a prior appeal, the Ninth Circuit reversed the district court's earlier grant of summary judgment to Connexx, finding that the time employees spent booting up computers is compensable under the

FLSA because it is an "integral and indispensable" part of their duties. On remand, the district court granted summary judgment for Connexx, finding that although this time is compensable, Connexx was not liable for payment under the "*de minimis*" rule, which allows infrequent and insignificant periods of time outside of the scheduled working hours that cannot, as a practical matter, be precisely recorded for payroll purposes to be disregarded.

The plaintiffs appealed a second time, arguing that the *de minimis* rule was no longer good law after the Supreme Court of the United States' decision in *Sandifer v. U.S. Steel Corp.*, 571 U.S. 220 (2014), which held that the *de minimis* doctrine was inapplicable to 29 U.S.C. § 203(o), a provision of the FLSA concerning time spent changing clothes or washing. The Ninth Circuit disagreed. In rejecting the plaintiffs' argument, the Ninth Circuit found that *Sandifer* did not disturb applicable caselaw with respect to the circumstances at issue and held that the *de minimis* doctrine remained applicable for overtime wages under 29 U.S.C. § 207. Although the Ninth Circuit found that the *de minimis* doctrine still applied, the court reversed the district court's judgment and remanded the case for further proceedings, finding that triable issues of material fact existed as to whether the time at issue was infrequent or insignificant and therefore met the legal standard for *de minimis*.

To reach this conclusion, the court evaluated whether the time at issue was *de minimis* by applying the three-factor test set forth in *Lindow v. United States*, 738 F.2d 1057, 1062 (9th Cir. 1984), which analyzes (1) the regularity of the work, (2) the aggregate amount of time at issue, and (3) the practical administrative difficulty of recording the time.

With respect to the first factor, the regularity of the work, the court found that while the time spent on the activities may have varied each day, the work regularly occurred because the employees were required to boot up or shut down their computers every shift. Employees performed uncompensated work before every shift, and Connexx "necessarily knew" of this time because they had to log in before they were able to clock in using the timekeeping program. However, the court found a triable issue of material fact as to whether workers performed off-the-clock work at the end of their shift because there was a disputed fact as to whether employees were required to wait for the computer to shut down before they could leave.

In analyzing the second factor, the aggregate amount of time at issue, the court found a triable question of fact as to the amount of time spent booting up and shutting down the computers because this time varied depending on the processing speed of the computer, with employees spending anywhere from a few seconds to 30 minutes per shift on these tasks. The court concluded that, to the extent workers may have "spent up to eleven, fifteen, twenty or even thirty minutes per shift on these tasks, the time cannot be characterized as *de minimis*," and the total uncompensated time could be "substantial" over time.

Lastly, in considering the third factor, the administrative difficulty of recording the time, the court explained Connexx could estimate the time spent booting up or shutting down computers based on the time an employee swipes their badge immediately preceding the clock-in time and the badge swipe immediately following the clock-out. Alternatively, the company could utilize a non-computer-based method for ascertaining when the employee started and stopped working, such as a physical punch clock.

In weighing the three factors, the court found that the regularity and lack of practical difficulty in recording the time supported a conclusion that the time was not *de minimis*, while the aggregate amount of time factor was a "closer question," noting several employees estimated ranges of time that were not considered *de minimis* over time. Ultimately, the court found that the plaintiffs raised triable issues of fact as to whether the time in question was *de minimis*, and thus, summary judgment was improper.

The court further found that, for any time that was not *de minimis*, the plaintiffs raised an issue of triable fact as to whether or not Connexx allowed employees to be compensated for boot up and shut down work outside of the employees' shift hours. Connexx policy prohibited employees from clocking in seven or more minutes before

their start time, and time paid at Connexx was rounded to the nearest quarter hour, thereby ensuring employees would be paid for time starting when their shift began, not earlier. The record also contained evidence supporting the conclusion that Connexx knew that employees arrived more than seven minutes early to boot up their computers, including because (1) workers who were not ready to take calls at the start of their shift were subject to discipline; and (2) it was not possible for workers to walk in the door at their scheduled start time and clock in on time given the time necessary for the employees to engage their computers. The plaintiffs also presented evidence that supervisors could not adjust an employee's pay to reflect the individual's actual start time, only the scheduled start time. For these reasons, the Ninth Circuit found that summary judgment on this alternative basis was also improper.

Given the multiple issues of material fact precluding summary judgment, the court reversed the district court's grant of summary judgment and remanded the case, noting a trial would be necessary to resolve the disputed fact issues.

Employers with questions regarding the application of the *de minimis* rule or wage-and-hour laws should contact experienced counsel for guidance.

© 2024 Perkins Coie LLP

## Authors



### [Christopher Wilkinson](#)

Senior Counsel

[CWilkinson@perkinscoie.com](mailto:CWilkinson@perkinscoie.com)    [202.661.5890](tel:202.661.5890)



### [Katelyn Sullivan](#)

Counsel

[KSullivan@perkinscoie.com](mailto:KSullivan@perkinscoie.com)    [310.788.3351](tel:310.788.3351)



## **Elizabeth Holland**

Associate

[EHolland@perkinscoie.com](mailto:EHolland@perkinscoie.com)

### **Explore more in**

[Labor & Employment](#)

### **Related insights**

Update

## **Wrapping Paper Series: Issues and Trends Facing the Retail Industry During the Holiday Season**

Update

## **Treasury's Final Rule on Outbound Investments Takes Effect January 2**