

## Calif. Employer's Guide To Tracking Off-The-Clock Tasks

By Elizabeth Arnold and Chester Hanvey (August 8, 2018, 12:07 PM EDT)

In a recent ruling, the California Supreme Court in *Douglas Troester v. Starbucks Corp.*[1] stated that the “de minimis” rule was not applicable in a case that involved employees who regularly performed a small amount of work-related tasks “off the clock.” The impact of this ruling for California employers is that potentially all time, regardless of how small, may be considered compensable, and failure to track and compensate this time may result in legal liability.

Many companies require hourly employees to perform small work-related tasks before clocking in and after clocking out, simply for practical reasons. For example, retail employees generally have to unlock doors, turn on lights and deactivate a store alarm at store opening before they clock in. Employees in other industries may need to boot up computers or turn on other electronic devices before they can clock in. Though these activities typically take seconds or minutes each day, they could potentially be considered compensable under this new ruling.

Troester emphasizes the importance for employers to know whether employees are performing any work tasks off the clock and the amounts of time spent on those tasks, regardless of how small. Many of our clients have benefited from using well-established job analysis techniques, such as time and motion observations, to gather these data in a systematic fashion. Observations are conducted at times when off-the-clock work is most likely to occur, such as the starts of shifts, during lunch breaks and at the ends of shifts. Observations generate an objective and precise record of the activities performed by employees, their duration, and the circumstances under which they take more or less time. Leadership and external counsel can then use this information to make informed decisions about how to proceed in the current landscape.

In the following sections, we provide a description of how to conduct a time and motion observation study in this context.[2]

### Observations

A time and motion observation study involves trained job analysts directly observing employee activities and recording detailed information about those activities. The result is a detailed work record of all activities performed, their durations and relevant contextual information. This approach is commonly



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used to collect data relevant to a variety of wage and hour issues.[3] However, the design of the study may differ depending on the issue being investigated.

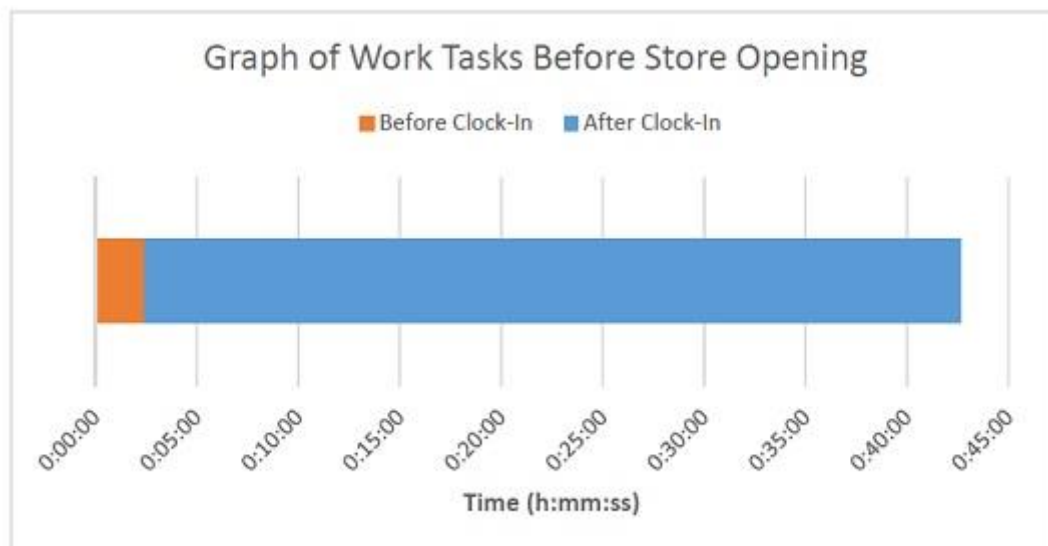
For purposes of measuring potentially compensable tasks before clock-in and after clock-out, observation can be targeted to include just those time periods as opposed to an entire work shift. An example observation record of an employee at the start of a shift is included in Table 1, below. The table shows each activity performed by the observed employee, the time that the task began and ended, the task duration, and whether the task was performed on or off the clock.

**Table 1: Example of Start-of-Shift Employee Observation Record**

Task Start	Task End	Duration	Task	On/Off the clock
8:21:50	8:22:05	0:00:15	Unlock front door and enter store.	Off
8:22:10	8:22:33	0:00:23	Walk through customer service lobby into cash area.	Off
8:22:33	8:22:49	0:00:16	Turn off store alarm.	Off
8:22:49	8:22:56	0:00:07	Turn on lights and music in cash area.	Off
8:22:56	8:23:08	0:00:11	Enter code into cash safe to open it.	Off
8:23:08	8:23:18	0:00:11	Log in to computer to start up.	Off
8:23:18	8:23:36	0:00:18	Log in to employee time-clock program.	Off
8:23:36	8:23:46	0:00:10	Enter name into time-clock program to log in.	On

Once activities are recorded, they are typically classified as either “compensable” or “noncompensable.” This decision benefits from the input of a legal expert familiar with the organization and the work being performed. Once tasks are classified, the data can be analyzed to shed light on the activities performed off the clock and how much time is spent on those activities. Collecting data from a representative sample of employees can provide valuable information about the activities of workers more broadly. Graph 1, below, illustrates potential results from a single employee observation.

**Graph 1: Work Tasks Performed before Store Opening**



## *Types of Observation*

Observation data can be collected by observing employees “live” in-person or remotely through the use of electronic monitoring such as video. Live observations involve a trained job analyst (observer) physically visiting the work location and “shadowing” employees as they perform their work. The observer documents each task and its duration to create a detailed record of the employee’s activities. This task-level data can then be collected and analyzed to determine how much time is spent on each activity during the time period of interest (i.e., start and end of shift).

Alternatively, video-based observation may be an option in some organizations, either in place of or in addition to live observations. Some businesses have existing security video that enables the viewer to clearly track employees from arrival to clock-in and from clock-out to departure. If this video exists in a format that is accessible and clear, observers can use this existing data source to record the same information as a live observer about employee activities. Alternatively, high-resolution cameras can be set up in strategic locations to capture new video for analysis.

## **Summary**

Data can be collected and analyzed to determine what off-the-clock tasks employees are performing and how much time they spend on them. Recent case law suggests that any amount of time spent on compensable tasks must be paid. The specific scenario and tasks being performed by employees may vary by industry and job, but using the valid methods described above can provide insight into what tasks employees are performing and help company leadership to set policy accordingly.[4]

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[1] Douglas Troester v. Starbucks Corp., case number S234969, in the Supreme Court of the State of California.

[2] Other sources of data may also be useful in providing information regarding employee activity but are beyond the scope of this article.

[3] For example, see Chester Hanvey, Wage and Hour Law: Guide to Methods and Analysis, first edition, New York, NY: Springer (2018).

[4] For additional information regarding the methodologies and issues described in this article, see Hanvey (2018).