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## Maryland High Court Decision Impacting Wage and Hour Laws – Employers Take Note

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July 17, 2025

**The Maryland Supreme Court recently certified in *Martinez v. Amazon.com Services LLC* that the *de minimis* doctrine applies to wage and hour law claims under the Maryland Wage and Hour Law and the Maryland Wage Payment and Collection Law (Maryland Wage Laws). The doctrine allows employers to ignore and ultimately not compensate employees for small amounts of time, typically a few seconds or minutes, that are uncertain or difficult to track for payroll purposes.**

As background, in 2022, the Maryland Supreme Court ruled in *Amaya v. DGS Construction, LLC* that the Portal-to-Portal Act of 1946 (PPA), which excludes certain travel time and preliminary and postliminary activities from compensable work hours under the federal Fair Labor Standards Act (FLSA), has not been adopted or incorporated in Maryland Wage Laws, meaning that employers in Maryland may be liable for more wages under state than under federal law. While the two decisions seem contradictory, the Maryland Supreme Court held they are not.

### The Maryland Supreme Court's Rationale

The Court determined that the distinction between the two opinions lies in the origin of the *de minimis* doctrine, which is rooted in the original FLSA, whereas the PPA constitutes a subsequent amendment. Further, the Court noted that the Maryland Wage and Hour Law (MWHL) mirrors the FLSA and repeatedly references the FLSA. Although the Court in *Amaya* held that referencing federal common law principles does not necessarily indicate the Maryland General Assembly's intent to incorporate those principles, the General Assembly's awareness of the Supreme Court's 1946 decision in *Anderson v. Mt. Clemens Pottery Company* establishing the *de minimis* doctrine in the FLSA suggests acceptance of its application to Maryland Wage Laws.

The dissenting opinion presents a different analysis, referring to the differing legislative history of the two statutes. Ultimately, the Court based its decision on the close similarities between the MWHL and FLSA, as well as their shared principles of balancing competing interests, and it extended the doctrine to the Maryland Wage Payment and Collection Law because "it makes no sense to apply the [*de minimus*] doctrine to the substantive wage statute but not to the statute governing only when those wages are paid."

The Court did not decide the question of the scope of the *de minimis* doctrine under Maryland Wage Laws, but rather only certified that the doctrine applies. Thus, the courts will now have to decide whether a particular amount of time worked is or is not *de minimis* under Maryland Wage Laws. *Martinez* will provide employers with the first "test" of the doctrine.

### What Does This Mean for Employers?

Employers should proceed with caution. Although the decision in *Amaya* held employers could be liable for compensating employees for certain travel time and pre- and postliminary work activities, the Court's decision in *Martinez* potentially gives some power back to employers. Because many pre- and postliminary activities can be infrequent and insignificant, the *de minimis* doctrine has the potential to exclude these activities from compensation. Further, the U.S. Department of Labor's guidance on recording work time under the FLSA states that common sense drives what constitutes insignificant and impractical for recording purposes.

Determining significance based on common sense requires considering the frequency of the activity and the actual connection to the employee's work duties.

Despite the doctrine's recognition under Maryland Wage Laws, the determination of what constitutes "*de minimis*" time can be a source of contention (and litigation, as in *Martinez*) and may require a detailed analysis of work activities and timekeeping practices. Employers bear the burden of demonstrating the activity is insignificant. Thus, employers may face an uphill battle under the doctrine.

So, while the *de minimis* doctrine provides some flexibility in accounting for very small periods of work, Maryland employers should exercise caution and ensure they are not using it to avoid compensating employees for identifiable, regular work time. It's vital to evaluate specific situations and seek legal guidance to ensure compliance with the FLSA and Maryland Wage Laws.

If you have any questions about compliance with the FLSA and Maryland Wage Laws, please reach out to [Donna M. Glover](#) or your Baker Donelson [Labor & Employment](#) attorney.

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