

# Home Depot Files Opening Brief in California Supreme Court Case Set to Determine Validity of Time Clock Rounding

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As we wrote about previously [here](#), in October 2022, the Sixth District of the California Court of Appeal in Camp v. Home Depot U.S.A., Inc., 84 Cal.App.5th 638 (2022), ignored a decade of precedent and found Home Depot's total time rounding for its non-exempt employees was unlawful. In so holding, the court held, "if an employer, as in this case, can capture and has captured the exact amount of time an employee has worked during a shift, the employer must pay the employee for 'all the time' worked." The court rejected at least half a dozen prior appellate opinions and instead focused on carefully selected passages from the California Supreme Court's holding in Troester v. Starbucks, 5 Cal.5th 829 (2018) and Donohue v. AMN, 11 Cal.5th 58 (2021). In Troester, the Supreme Court held the federal *de minimis* doctrine did not apply in California, and employees must be paid for all time worked, even during activities that occur regularly but take only a few minutes per day before clocking in (e.g., undergoing a bag check). In Donohue, the Supreme Court rejected time rounding for 30-minute meal periods, although it did not address whether rounding of clock punches for in and out times when shifts begin and end was improper.

The Camp court found rounding of employees' total time is impermissible when the employer records actual time and has the ability to pay by the minute. In reaching its decision, the court relied primarily on one plaintiff who lost time due to rounding. Strikingly, the court ignored the fact that the other plaintiff was admittedly overpaid due to rounding. The underpayment of one plaintiff and overpayment of another suggests rounding evened out over time as a whole. However, the Camp court did not consider this highly significant fact and overlooked the settled principle that rounding systems should not be assessed or found unlawful solely on the basis of their isolated impact on a single employee.

After Home Depot appealed, the California Supreme Court granted review of the opinion in February 2023. The parties' briefing is underway, and on June 1, 2023, Home Depot filed its opening brief. Absent any extensions, Camp's response brief will be due July 3, 2023. Home Depot will then

have the opportunity to file a reply brief.

The California Employment Law Council (“CELC”) and the Employers Group, non-profit companies who advocate on behalf of employers, have hired Richard J. Simmons and Tyler J. Johnson of Sheppard Mullin to draft the employer-side amicus brief in Camp. In doing so, CELC and the Employers Group have confirmed Sheppard Mullin’s position as the preeminent employment law firm and subject-matter expert on wage and hour issues. The amicus brief will serve as the voice of employers throughout California and will provide further support to Home Depot to show the California Supreme Court the validity of time rounding. Time rounding has long been used by employers in California and the California Court of Appeal has consistently upheld its validity when the practices are properly designed. The Camp decision has called into question whether employers can continue to round time. An adverse ruling by the Supreme Court could lead to potential class action and PAGA claims as well as unpaid wages and penalties liability for employers. Sheppard Mullin’s amicus brief will play a critical role in arguing to the Supreme Court that this should not occur.

Sheppard Mullin will continue to update readers as the briefing process unfolds.

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