

ARE YOU SAVING ON WAGE COSTS BY “ROUNDING” WORKTIME?

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Then You Might Be Doing It Wrong!

For many years, some employers have chosen to “round” non-exempt employees’ worktime in computing wages. This is emerging as another recurring claim in the continuing flood of lawsuits filed under the federal Fair Labor Standards Act. If you believe that ending such a procedure would cause your wage costs to increase, this is a danger signal.

A LITTLE BACKGROUND

As an enforcement policy, the U.S. Labor Department says that it will not challenge an employer’s practice of rounding starting and stopping times to the nearest 5 minutes or to the nearest tenth or quarter of an hour in calculating an employee’s pay. However, DOL cautions that this is acceptable only if the practice averages out so that employees are properly paid for all of the time they actually work. The agency emphasizes that rounding does not excuse arbitrarily failing to record or properly pay for any amount of an employee’s fixed, regular, or practically-ascertainable worktime.

Different employers handle timekeeping in different ways, of course. But the upshot of DOL’s position is that, under any rounding system, employees must be paid for *at least* as much time as they have actually worked over the long-term. Put differently, rounding should favor employees as much as or more than it does the employer. Rounding scenarios in which an employer consistently eliminates recorded time for weeks or months on end might well not do this. So how could that happen?

HOW TO DO IT WRONG

One illustration is failing to round to the *nearest* increment. For example, rounding to the nearest quarter-hour typically means that the employee's starting time-entry is rounded back for up to 7 minutes after the quarter-hour and forward for 8 minutes or more past the quarter-hour. As applied to an employee whose scheduled starting time is 8 a.m., punching in at 7:52 a.m. would be rounded to 7:45 a.m.; punching in at 7:53 a.m. would be rounded to 8 a.m. By contrast, a practice of always rounding to 8 a.m. if the employee punches in at any point after 7:45 a.m. could cause the employee not to be paid for all hours worked over a period of time.

Another source of potential trouble is rounding an employee's meal-period time entries, particularly if the workday's beginning and ending times are also rounded. The danger could be even greater if this is done with respect to relatively short meal breaks, such as 30-minute ones.

In addition, the chosen rounding-interval's length could increase the system's vulnerability to a challenge. For instance, this risk is probably higher if the employer rounds to the nearest 15 minutes rather than to the nearest 5 minutes.

Even if rounding is appropriate under the circumstances, it should be limited to the clerical handling of *exact times already recorded*. Using rounding to restrict the recording of those times in the first place, or changing original records to show only rounded times, could lead to trouble. Neither is it wise to rely upon rounding as a substitute for managing employees' attendance or worktime, such as by instructing employees to record their working times so as to correspond exactly to certain intervals, or prohibiting them from recording their beginning and ending times outside of certain timeframes.

Be certain that electronic or computerized timekeeping systems operate lawfully. Even elaborate and expensive devices and software could still expose you to liability if you round employees' hours worked in an impermissible way, or otherwise improperly modify the amount of worktime that is transmitted to an employer's payroll software. Programmed timekeeping procedures could make perfect sense to a software designer but still not square with the FLSA's requirements.

WHY IT MATTERS

DOL's enforcement policy does not prevent current or former employees from suing over rounding, and they are doing so. In addition to making the kinds of claims mentioned above, some are arguing that employers using computerized timekeeping systems and payroll software programs have no justification for rounding at all. Groups of employees are alleging that rounding resulted in their being unlawfully unpaid for tens of thousands of minutes of worktime.

It's conceivable that, after investing extensive time, money, and other resources, an employer might prove in a DOL investigation or in a lawsuit that its rounding practice did not cause it to pay less than what the FLSA requires. Then again, maybe not. It would be prudent to evaluate this before the wolf is at the door.

As always, take into account whether and how state or local laws have an impact. Some jurisdictions are now addressing rounding under their own wage-hour rules. They can (and sometimes do) take a more employee-favorable stand.

This is one of those many areas of wage-hour law that can trip up even the most careful employers. There are lots of others. That's one reason Fisher Phillips has started a blog aimed specifically at wage-hour topics. John Thompson, the author of this article, is also the editor of our Wage and Hour Laws blog, which you can access at www.wage-hour.net.