

# IS THIS THE END OF EMPLOYEE TIMECARD ROUNDING IN CALIFORNIA? 3 STEPS FOR EMPLOYERS TO TAKE AFTER RECENT RULING

Insights  
Jul 28, 2023

The California Court of Appeal issued a blow to employers this week by taking yet another step toward eliminating their ability to round employee time punches. Although the California Supreme Court will ultimately weigh in, you should review your practices now for compliance with evolving rules. Read on to find out what you need to know about *Woodworth v. Loma Linda Univ. Med. Ctr.* – and the three steps you should consider taking.

## Neutral Rounding Practices Scrutinized

Nicole Woodworth was a registered nurse at Loma Linda University Medical Center. She filed a class and PAGA action against the medical center after her employment ended, alleging a host of wage and hour violations, including a claim for failure to pay overtime wages partially premised on the employer's timecard rounding practice.

The employer in this case had a neutral rounding policy that rounded time punches to the nearest tenth of an hour. While 51.4% of employees were paid for more time than they were on the clock, 47.4% were paid for less, and the remaining 1.1% were unaffected. Thus, the medical center's expert concluded that the policy was permissible because there was no systematic advantage to either the medical center or the employees based on the neutral timecard rounding practice.

But the court rejected this policy, pointing to another recent ruling, which held that when an employer "can capture and has captured the exact amount of time an employee has

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worked during a shift, the employer must pay the employee for 'all the time' worked."

In addition to the recent case law on payment of wages for all work performed, the court noted the lack of legislation recognizing a rounding exception and explained that technology now enables employers to easily and precisely capture time. Thus, the court said rounding should not be permitted, and employees are to be paid for all the time worked. In this case, the medical center could and did capture the exact number of minutes that employees worked.

### **Open Questions Remain for California Supreme Court**

For years, California courts have allowed timecard rounding that meets certain criteria. Specifically, the courts have stood behind the ruling in *See's Candy* opining that a rounding policy is lawful if it is facially neutral and applied "in such a manner that it will not result, over a period of time, in failure to compensate the employees properly for all the time they have actually worked." *See's Candy* is aligned with the guidelines for federal regulations, and to date, California has not made any laws or regulations regarding the practice of rounding – therefore, the guidelines have developed only through case law. It would now appear, however, that *See's Candy* is on the verge of being rejected entirely, thereby ending permissible rounding of time punches.

Indeed, a recent ruling requiring payment for all time worked is currently awaiting review from the California Supreme Court, though no date for hearing has been scheduled yet. But you should keep an eye on this case because, depending on the outcome, employers could retroactively face liability for rounding practices that were once permitted.

### **3 Steps for Employers to Take Now**

As we wait for further guidance from the California Supreme Court on rounding practices, you can take the following three steps right away:

1. If you are utilizing a rounding policy, consider ending this practice immediately, even if it is facially neutral.



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2. Switch to a practice of paying for time based on the actual punches. This should make for a relatively simple transition and limit potential liability for unpaid wages.
3. Ensure you are paying employees for “all hours worked,” as the California courts are continuing to find new ways to expand liability for employers.

## **Conclusion**

We will continue to monitor developments in this area, so make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information. If you have questions regarding rounding practices, please contact your Fisher Phillips attorney, the authors of this alert, or any attorney in [our California offices](#).