Is It OK To "Round" An Employee's Worktime?

Insights
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For many years, some employers have chosen to "round" non-exempt employees' time entries in computing their wages. News items in recent days have reported on a California appellate court's ruling in *See's Candy Shops, Inc. v. Superior Court and Silva* that a properly administered "rounding" practice does not violate California wage-hour law.

This is of course good news for California employers, and to some extent for employers across the nation (*See's Candy* is not binding precedent outside of California or under the federal Fair Labor Standards Act). Nevertheless, management should not take it as a foregone conclusion that "rounding" worktime is beyond dispute in every situation.

What Is "Rounding" In The First Place?

It is first necessary to attach a common understanding to the term "rounding", because the word is used to describe a multitude of different practices. This can be done with reference to the U.S. Labor Department's enforcement policy that played a central role in *See's Candy*. USDOL says that, under the FLSA, it will not challenge an employer's practice of rounding a worker's starting and stopping times to the nearest 5 minutes or to the nearest tenth or quarter of an hour in calculating his or her pay, assuming that the practice "averages out over a period of time" such that employees are properly paid for all of their worktime. *See*, *e.g.*, 29 C.F.R. § 785.48(b).

USDOL appears to mean that rounding should result in an employee's being credited with at least as much time as he or she has actually worked over the long-term. Consequently, the ultimate question under USDOL's approach gets down to the impact of such a policy or practice: If rounding does not result in a failure to pay the legally-required wages in the long run, then its effect is not unlawful under the FLSA. Given the uncertainty that USDOL embraces in using a phrase like "averages out" and the imprecision surrounding what "period of time" might be appropriate for judging this, evaluating rounding's effect might reasonably be viewed as a question of probability, rather than exactitude: Is it probable that the employer's practice will, over time, capture and properly compensate at least as much time as the employee actually works?

The Bottom Line

See's Candy underscores that rounding is emerging as yet another source of potential wage-hour

claims. However, the case also supports the view that there is nothing inherently unlawful about rounding worktime consistently with USDOL's policy.

Even so, it is likely to be a while before a court consensus emerges to refine the parameters of the principles and considerations underlying USDOL's policy. And, as always, an employer should continue to take into account whether and how state or local laws address rounding under their own wage-hour requirements.