

# Time Clock Issues Rounding Practices



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## The Basic FLSA Pay Rule



- Employees must be paid for all “hours worked”.
- “Hours worked” means all time an employee is “suffered or permitted to work”. 29 U.S.C. 203(g).

## Exceptions



- The “de minimis” rule.
  - *Anderson v. Mt. Clemens Pottery Co.* 328 U.S. 680 (1946): “when the matter in issue concerns only a few seconds or minutes of work beyond the scheduled working hours, such trifles may be disregarded.”
  - A “trifle” is not defined, but DOL regulations state that 10 minutes is not a trifle.

## Factors in determining what is *de minimis*



- The practical administrative difficulty of recording additional time;
- The size of the claim in the aggregate;
- Whether the claimants performed the work on a regular basis.
- The time may be *de minimis* if the difficulty is great, the aggregate per work week is small, and the work is irregularly performed.

# Rounding



- Time clock rounding is permissible, which means employers have the ability to routinely and systematically disregard some time worked.
- However, the rounding system must work both up and down, meaning employees also sometimes get paid for time *not* worked.

## 29 C.F.R. 785.48(a)



- Time clocks are not required.
- Employers need not pay employees who voluntarily clock in early or clock out late, provided they do not engage in work.
- Minor differences between time clock records and actual hours worked cannot ordinarily be avoided, but the differences should be small.

## 29 C.F.R. 785.48(b)



- Practices of rounding time to the nearest 5 minutes, or one tenth or one quarter of hour are common.
- Presumably, this arrangement averages out so employees are compensated for all time actually worked.
- Rounding is acceptable, provided it will not result, over time, in failure to compensate employees for all time actually worked.

# Rounding



- DOL guidance is somewhat more helpful than the regulation. Fact Sheet #53 states:
  - If an employer rounds to the nearest quarter hour, time from **1 to 7 minutes may be rounded down**, but time from **8 to 14 minutes must be rounded up**.
  - Other rounding increments are not mentioned or discussed, but presumably, if the same concept is used in 5 minute or 10 minute rounding systems, DOL will allow it (better to err on the employee's side if 10 minutes is used).

# Instructions to Employees



- From this point forward you may only clock in five (5) minutes prior to the beginning of your shift. You must also clock out exactly when your scheduled shift is over, or as closely to it as possible unless otherwise approved by your supervisor. If you clock in before five (5) minutes prior to your shift or clock out past the exact end time of your scheduled shift, you must communicate that information to your supervisor.
- You are not permitted to complete any work prior to your scheduled shift unless authorized by your supervisor and you must not complete any work after clocking out.

Questions?



THANKS FOR ATTENDING!