

Employer Can “Round” Hours, But Must ensure that All Time is Actually Paid

1. Question: I operate a fast food restaurant with about 50 employees. As you can imagine, doing recordkeeping is a nightmare. But my accountant told me I could make things a lot easier on myself by “rounding” the employees’ hours. She says the way it works is that when employees arrive or leave a few minutes late or early, the employer can round off their hours to the nearest 15-minute interval.

For example, if an employee is scheduled to begin work at 9am and doesn’t arrive until 9:10 am, I could round his hours off to 9:15 am and record that as his starting time. And if an employee is scheduled to work until 5pm and doesn’t leave until 5:07, I can similarly record that she left at 5pm.

Rounding may seem unfair in these two examples, since the employee is not getting paid for all the minutes he worked. However, my accountant said that the practice is legal as long as I am consistent and use the same rounding method when it works in the employee’s favor. For example, if that same employee left at 5:09pm, I would then have to round his hours to indicate that he worked until 5:15pm, and he would get a “free” six minutes.

Rounding seems like a great timesaver to me. Is it allowed under state and federal law?

Answer: In most cases, yes. Here’s what the federal regulations say:

“It has been found that in some industries, particularly where time clocks are used, there has been the practice for many years of recording the employees' starting time and stopping time to the nearest 5 minutes, or to the nearest one-tenth or quarter of an hour. Presumably, this arrangement averages out so that the employees are fully compensated for all the time they actually work. For enforcement purposes this practice of computing working time will be accepted, provided that it is used 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.” 29 CFR 785.

Thus, rounding is generally allowable as long as the following criteria are met:

1. The rounding works both ways (“for” and “against” the employee),
2. The employer does not round in increments longer than 15 minutes, and
3. The rounding works out so that the employee is still fully paid for all hours actually worked.

2. Question: What is the “de minimus” rule?

Answer: These same federal regulations state that an employer may disregard “insubstantial” or “insignificant” amounts of time that occur beyond an employee’s scheduled hours. However, these periods cannot be longer than a few minutes, and they must be uncertain and indefinite periods of time that cannot, as a practical matter, be ascertained. By contrast, employers must always count work periods that occur regularly, no matter how short they are. 29 CFR 785.

3. Question: Okay, those are the federal rules. What does Oregon say?

Answer: The Oregon Bureau of Labor & Industries (BOLI) does not contain the above language in our statutes or administrative rules. However, BOLI uses the federal rules for guidance in this area, as long as they do not conflict with other state laws or cases. Therefore, although we cannot predict anything with certainty, it is likely that BOLI would turn towards these federal regulations if this kind of case was filed.

For more information on this and other important issues affecting Oregon employers, including seminars conducted by our Technical Assistance for Employers staff, please visit our website at www.oregon.gov/boli/ta. You can also call us at 971-673-0824.