

Rounding employee's time may present legal risks

The Fair Labor Standards Act requires that employers track the time that nonexempt employees spend working. Many use a swipe-card system, biometric scanner, computer logins or even an old-fashioned punch clock.

The problem with time clocks is that they permit early punches. An employee might punch in at 6:55 a.m. for a shift that starts at 7:00 a.m. Is that extra five minutes “on the clock” considered working time that must be paid? Well, it depends.

Is the employee actually engaging in work (which must be paid), or is the employee punching for convenience and waiting to work (which can be unpaid)?

Of course, those added “on the clock” minutes could lead to confusion as to whether they should have been paid and, in turn, lawsuits. Thus, the FLSA also permits time clock rounding.

The FLSA permits employers to round employee time punches to the nearest 5-, 10- or 15-minute interval, as long as it is a true rounding and works to the benefit of both the employer *and* the employee. As the Department of Labor states, rounding is OK if “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.”

As long as rounding works both ways (up *and* down from the midpoint of the chosen rounding unit), an employer *should* be okay. But that doesn’t mean an employer is all clear.

The DOL says employers should discourage “major discrepancies” between “clock records and actual hours worked.” In other words, frequent and repeated rounding could call into question the accuracy of an employer’s overall time records.

So what’s an employer to do? Here are three suggestions.

- 1. Consider a shorter rounding period.** A 1/10 of an hour (6-minute) rounding period permits for much greater synergy between the time on the clock and the time actually spent working than does a 15-minute rounding increment.
- 2. Prohibit employees from clocking in before a certain time and out after a certain time.** All bona fide working time must still be paid, but a two- or three-minute buffer around the start and ending time limits time spent on the clock while not actually working (such as grabbing a coffee).
- 3. Simply pay to the punch.** Yes, this encourages abuses and would allow employees to punch early or late to earn extra pay. But those abuses are serious performance issues that should be handled as such with discipline and, if repeated, termination.

Regardless of the choice you make, no employer should ever run payroll without someone (such as a supervisor) putting eyes on all employees’ time records to ensure accuracy. Further, make sure employees

understand via policy their obligation to bring incorrect paychecks to your attention as soon as possible.