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Insights On Time-Rounding Systems For Calif. Employers

by Roland Juarez and Andrea Calem

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Employers have become accustomed to employee-friendly decisions from the California appellate courts, particularly in the wage-hour arena. California courts frequently depart from the interpretation given to identical or similar regulations under the federal Fair Labor Standards Act, citing the California Labor Code's strong public policy in favor of enforcing the wage laws for the benefit of California workers.

When it comes to time-rounding practices, however, the trend seems to be otherwise. Employers have an obligation to keep records reflecting the time worked by their employees. Many companies use electronic time systems to record employees' time. These electronic time systems can significantly cut down on the time required to manage payroll and can reduce computational errors, if set up correctly. Many such systems will use a "rounding" practice where, for example, if an employee has a start time at 9 a.m., but clocks in to work at 8:55 a.m. or 9:05 a.m., the time system will record that the employee started work at 9 a.m. These "rounding" practices have frequently been challenged in the courts as creating inaccurate time records and for failure to pay for all time worked. In the "gotcha" world of California wage and hour litigation, these lawsuits often take the form of a class action.

In support of rounding systems, California employers start with some support from the federal and state regulations and court decisions outside of California. 29 C.F.R. § 785.48, a regulation promulgated under the FLSA, permits employers to compute employee work time by rounding "to the nearest five minutes, or to the nearest one-tenth or quarter of an hour," provided that the rounding system does not, over time, result in "failure to compensate the employees properly for all the time they have actually worked." California's Division of Labor Standards Enforcement, or DLSE, has adopted this regulation, finding it consistent with California's employee-friendly wage policies.¹ In addition, federal district courts outside of California interpreting this regulation have upheld rounding systems that "average out" over time, so that employees are neither consistently overpaid nor underpaid, and employers do not consistently benefit from the rounding system.²

California's Approach — AHMC Healthcare

A California appellate court decision also recently addressed these issues head-on and ruled in favor of the use of a time-rounding system. In *AHMC Healthcare Inc. v. Superior Court of Los Angeles County*,³ a putative class action, California's Second District Court of Appeals upheld an employer's use of a payroll system that automatically rounded employee time up or down to the nearest quarter hour, even though the practice resulted in a net loss to the named plaintiffs. Because the California Supreme Court has not

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yet addressed this issue, the guidance provided by AHMC Healthcare is helpful, particularly its discussion of the statistical criteria required to establish that time-rounding practices are neutral in practice.

AHMC's timekeeping policy was facially neutral: It rounded employees' time clock swipes up or down to the nearest quarter hour. If an employee clocked in between 6:53 and 7:07, he or she was paid as if he or she had clocked in at 7. If an employee clocked in from 7:23 to 7:37, he or she was paid as if he or she had clocked in at 7:30. However, analyzing payroll data, the statistician found a slight net loss to employees at one of the two facilities assessed in the study. Additionally, the named plaintiffs lost 3.7 hours and 1.6 hours of compensation, respectively, as a result of rounding practices.

The court first relied on two prior California appellate court decisions and a Ninth Circuit decision to easily dispose of the argument that a rounding policy that results in any loss to an employee, no matter how minimal, violates California law. In California's Fourth District Court of Appeal in 2012, *See's Candy Shops Inc. v. Superior Court*,⁴ the plaintiffs challenged a timekeeping system that automatically rounded punches to the nearest tenth of an hour. The defense expert analysis established that the rounding resulted in a total gain of thousands of hours for the class members as a whole — 59.1 percent had a net gain in time, 33 percent had a net loss and 7.9 percent had no difference. The named plaintiff received a net benefit of five seconds per shift, but lost 3.6 seconds of overtime.⁵ Denying the plaintiffs' summary judgment motion, the court held that the effect of the rounding system was not automatically unlawful.

Four years later, in *Silva v. See's Candy Shops Inc.*, the Fourth District granted summary judgment to the employer on an almost identical set of facts.⁶ There, statistics showed that employees in the aggregate received a net surplus of 2,749 work hours under the rounding policy. Sixty-seven percent of the employees had either no impact or a net gain under the rounding policy, overtime compensation essentially did not change and the plaintiff obtained an aggregate surplus of 1.85 hours.

The Ninth Circuit became the first federal appellate court to interpret Section 785.48, in *Corbin v. Time-Warner Entertainment/Newhouse Partnership*.⁷ The plaintiff in that case lost \$15.02 in total compensation over a one-year period as a result of a time-rounding system, and argued that a lawful rounding system would result in a net gain or break-even for every employee in every payroll period. Following the reasoning in *Silva v. See's Candy*, the Ninth Circuit emphasized that the text of Section 785.44 speaks of "employees" as a group, not as individuals. It would defeat the purpose of the regulation, which promotes efficiency in calculating wages, if employers were required to engage in mathematical calculations to ensure a neutral result, or net gain, for each employee in every pay period.

The AHMC Healthcare court relied on these cases to guide its inquiry into whether the company's rounding system was neutral in practice. The court was not troubled by fluctuations in compensation resulting from rounding practices, which were to be expected. The more difficult question was whether a net loss at one of the facilities signified that the time-rounding system was not neutral in application. AHMC's statistical expert examined the data for two facilities over a four-year period from three perspectives: (1) the percentage of employees who gained by having minutes added to their time, compared to the percentage who lost by having minutes deducted; (2) the percentage of employee shifts in which time was rounded up, compared to the percentage in which time was rounded down; and (3) whether the employees as a whole benefited by being paid for minutes or hours they did not work, or whether the employer benefited by paying for fewer minutes or hours than were actually worked.

The results in the two facilities were considered neutral overall. At one facility, the rounding procedure

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added time to the pay of 49.3 percent of the workforce, left 1.2 percent of the workforce unaffected, while 49.5 percent of the workforce lost time. On a day-by-day analysis, the procedure added time to 45.2 percent of the employee shifts, averaging 4.96 minutes per day; it reduced time from 43.3 percent of employee shifts, averaging 4.82 minutes per day; and it had no effect on 11.6 percent of the shifts. Overall, the number of minutes added to employee time by the rounding policy exceeded the number of minutes subtracted, adding, in the aggregate, 1,378 hours to employees' total compensable time.

At the other facility, the rounding procedure added time to the pay of 47.1 percent of the workforce, had no effect on 0.8 percent of the workforce and caused 52.1 percent of the workforce to lose time. On a day-by-day analysis, rounding added time to 46.6 percent of the employee shifts examined, reduced time from 42.3 percent of the shifts (by an average of 2.33 minutes per employee shift) and had no effect on 11 percent. Again, there was a net compensable time gain for employees of 3,875 hours.

And, when the data from the two facilities was combined, the effect was a net increase of 5,254 in compensated hours.

Based on this data, the court agreed that the overall result was a net loss to the employer and a net gain for the employees. The majority of employee shifts either had time added or were unaffected, and the number of minutes added to employee time from rounding up exceeded the number of minutes subtracted from rounding down. The fact that a slight majority (52.1 percent) of employees at one facility lost an average of 2.33 minutes per employee shift did not invalidate the rounding system, because the employees benefited overall. The Second District issued a writ of mandate directing the superior court to grant AHMC Healthcare's summary judgment motion.

As this analysis shows, the legality of a time-rounding system will be assessed with reference to a number of different factors. At a minimum, employers should make one of the following two assessments: (1) compare all rounded punches with the actual punch times to determine the overall net effect of the rounding; and (2) compare the percentage of employees for whom the rounding resulted in a net loss of time with the percentage for whom rounding resulted in overcompensation. The statistical analysis was more complex and detailed in AHMC Healthcare, as well as in several other cases discussed in the opinion, examining individual employees, shifts and the overall net effect of the rounding; drilling down in this fashion can be helpful. Results can vary depending upon the cohorts and time periods on which the calculations are based. Well aware of this, courts are likely to examine multiple data points and methods of calculation to ensure that an employer is not manipulating the system to achieve inequitable results.

The AHMC Healthcare case supports the use of neutral time-rounding systems in California, but exposes the complexities associated with assessing whether such a system yields neutral effects in practice. The case suggests that employer best practices for time-rounding systems should include periodic audits which utilize sound statistical methodology.

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Notes

¹ DLSE Enforcement Policies and Interpretations Manual (Revised, June 2002 Update), ¶ 47.1, “Rounding.”

² E.g., *Alonzo v. Maximus Inc.*, 832 F.Supp.2d 1122, 1126 (C.D.Cal.2011); *Gonzalez v. Farmington Foods Inc.*, 296 F.Supp.2d 912, 932-33 (N.D.Ill.2003); *East v. Bullock’s Inc.*, 34 F.Supp.2d 1176, 1184 (D.Ariz.1998).

³ *AHMC Healthcare Inc. v. Superior Court of Los Angeles County*, No. B285655 (June 25, 2018).

⁴ 210 Cal. App. 4th 889.

⁵ 210 Cal. App. 4th at 896-97.

⁶ 7 Cal. App. 5th 235 (2016).

⁷ 821 F.3d 1069 (9th Cir. 2016).

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