

Electronic Alert

Volume 26, Issue 5

February 16, 2023

The End of the Round-Up? Oregon Federal Court Takes Issue with Employer Rounding Practices

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Fear not—despite the clickbait title, the rodeo is safe. However, the practice of employers rounding employees’ work time to calculate pay may not be. Rounding has been used as a timekeeping method for years and was designed to make calculating employees’ time more practical in the days before everyone had a super-computer in their pocket. Rounding typically works in the following way, sometimes referred to as the “7-Minute Rule”: minutes 0-7 are rounded to 0 minutes, minutes 8-22 to 15 minutes, minutes 23-37 to 30 minutes, minutes 38-52 to 45 minutes, and minutes 53-60 to 60 minutes. The conventional wisdom is that neither the employee nor employer are disadvantaged because the pay balances in the end. For example, an employee may be underpaid when time is rounded down, but will be overpaid when time is rounded up, which, in theory, should even out at the end of the pay period.

This method of rounding employees’ work time is explicitly allowed under federal law, and some states allow it as well, such as our neighbors to the north up in Washington, so long as the rounding does not disadvantage employees overtime (that is, the rounding up and down must effectively even out). However, Oregon law is silent with respect to rounding employees’ time. Recall that employers must follow the law most favorable to the employee, so if federal law allows rounding but state law does not, then employers cannot round employees’ time for payroll purposes and must pay employees for every minute worked.

A recent federal case, *Eisele v. Home Depot U.S.A., Inc.*, held that rounding is prohibited in Oregon and helped shed light on when an employer’s failure to pay an employee’s earned wages is considered “willful.” In the case, Home Depot used a time-keeping software system to log and keep track of employees’ time worked, and then rounded the time to the nearest 15-minute increment when paying out wages. In August of 2020, the plaintiff filed a class action complaint against Home Depot alleging that this rounding practice resulted in a violation of ORS 652.120 and 652.140, which both require that employers pay employees all wages earned and due.

The federal judge ruled that, although Oregon statutes are silent with respect to rounding (they neither allow nor prohibit it explicitly), the Oregon statutes require payment of wages for “all hours worked,” which is in direct conflict with rounding principles (since sometimes employees would not be paid for all hours worked when time was rounded down), particularly where, as was the case in this matter, the employer tracked every single minute worked prior to the rounding.

Nonetheless, Home Depot was able to escape liability for penalties associated with willfully failing to pay wages due to the law being sufficiently uncertain in this area, as well as the employer’s reasonable belief that its action was permissible. There were several factors that helped the judge conclude that the law was sufficiently uncertain, including previous litigation in California, the explicit allowance of

the practice under federal law, and previous guidance by the Bureau of Oregon Labor & Industries (“BOLI”) that condoned rounding. However, now that there is a federal court case here in Oregon holding that rounding is not permitted, it may be harder for employers to avoid willfulness penalties in future actions.

In light of this decision, Oregon employers who currently use rounding should rethink their timekeeping and pay practices to ensure compliance with this result and other Oregon employment laws.

For questions on compliance with these rules or if you would like assistance in reviewing your timekeeping and pay practices, contact Sean Ray at 503-276-2135 or sray@barran.com, or Blayne Soleymani-Pearson at 503-276-2190 or blayne@barran.com.