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## Rounding Time Is No Longer a Safe Bet in Oregon and Washington

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The Fair Labor Standards Act (FLSA) mandates that employers compensate employees for each hour worked. Nonetheless, the Department of Labor guidance permits rounding of employee time punches so long as, among other things, the rounding is conducted in a neutral manner and, if any favor is shown, it benefits the employee. For example, using rounding, if an associate clocked in anytime from 7:53 a.m. to 8:07 a.m., the company would round the employee's time to 8:00 a.m. and pay the employee for hours worked based on an 8:00 a.m. start time.

Despite federal acceptance of neutral rounding, courts in the Pacific Northwest have begun to reject rounding by employers. In Oregon, the U.S. District Court concluded that "Oregon does not permit rounding[.]" *Eisele v. Home Depot U.S.A., Inc.*, 643 F. Supp. 3d 1166, 1175 (D. Or. 2022). Oregon's Bureau of Labor and Industries ("BOLI") has directly addressed the issue, advising employers utilizing a rounding system that they should implement precautions to ensure employees are paid for all work time each pay period, such as adjusting hours at the end of each pay period to capture hours worked that may have been excluded by the rounding system, or utilizing a rounding system that always rounds hours in the employee's favor.

In Washington, neutral rounding is still ostensibly permitted, but the practice creates opportunities for employees (and their attorneys) to argue that a seemingly neutral rounding policy, when applied, favors the employer. At least one Washington trial court recently granted summary judgment in favor of a class of employees, finding that the employer's "neutral" rounding policy mostly favored the employer. Additionally, rounding is not permitted for meal and rest periods, which can easily lead to administrative confusion as to when it is appropriate to round and when it is not.

### What Employers Should Do Now

Based on these decisions, we strongly encourage employers who are rounding employees' time punches to end this practice and modify their pay practices to either (1) pay employees based on actual time worked or (2) utilize a rounding system that always rounds hours in the employees' favor. These adjustments should not have a noticeable effect on the employee or the company and decreases the risk of wage claims, including class actions. Any changes to payroll practices should be clearly communicated to employees ahead of time.

If you have any questions about rounding or your pay practices, please reach out to Leah Lively or Alexandra Shulman.



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