

Wisconsin Wage and Hour Law: Rounding Employee Time

Article By:

Jonathan E. Sacks

Wage and hour claims, particularly those asserting class or collective violations, comprise a significant percentage of employment law claims across the country, and Wisconsin is no exception. Improper rounding and other timecard policies frequently are the culprit in such claims against employers.

Wage and hour lawsuits, whether individual or class/collective action in nature, typically are brought in Wisconsin under the federal Fair Labor Standards Act ("FLSA"), sometimes accompanied by parallel claims under state law. Such lawsuits can be not only financially draining on a company, but also often require a substantial devotion of time by company management, human resources personnel, and other employees.

What is "Rounding"?

"Rounding" refers to adjusting an employee's clock-in or clock-out time to one more easily calculated, as opposed to using the exact time the employee clocked in or out. For example, the employee's start or stop time would be rounded to the nearest five-minute increment, nearest one-tenth of an hour, or nearest quarter of an hour. This practice is particularly common among third-party payroll service and time entry providers or time entry program, so, an employer may be rounding without even knowing it.

The FLSA explicitly approves of the practice of rounding "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 785.48(b). Federal and state guidance generally provides that a policy that rounds up or down to the nearest seven minutes will be considered compliant. For example, a policy that provides for an 8:07 a.m. clock-in to be rounded back to 8:00 a.m. and an 8:08 a.m. clock-in to be rounded forward to 8:15 a.m. would not result in the employee being undercompensated over the long term. Conversely, a policy that always rounds in the employer's favor and to the employee's detriment would violate the law.

While Wisconsin law does not explicitly address rounding, the state's wage and hour laws typically mirror the FLSA. To that end, guidance from the Wisconsin Department of Workforce Development (DWD) provides that rounding is permissible as long as it doesn't result in an employee performing uncompensated work in the long run.

The Potential Risks of Non-Compliance

Both the FLSA and Wisconsin law provide for statutory damages, including unpaid wages, overtime, and liquidated double damages for wage and hour claims. In addition, prevailing plaintiffs typically will be awarded attorney's fees. While an individual employee's rounding or other time clock-based claim may be for a relatively small ("de minimis") amount, those damages and attorney's fees can escalate quickly, and obviously become astronomical when class or collective claims are involved. For example, while an individual rounding claim over a two-year period may amount only to \$100 in unpaid overtime, when that claim is doubled for liquidated damages and then applied to a nationwide company of 5,000 employees, suddenly the employer is facing potential damages of a million dollars *plus* attorney's fees, which themselves may amount to several hundred thousand dollars more.

The Takeaway

Employers who have implemented, either directly or through third-party service providers, a system of rounding time in their payroll policies, should evaluate that system carefully to ensure that it is being equitably applied to employees and is not benefitting only the company. The mere presence alone of a rounding system may draw unwanted attention from plaintiff's attorneys, as a single employee is all that is needed to initiate a potential class or collective action.

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