

# YOU SPIN ME RIGHT ROUND, BABY

## DOL Addresses and Confirms Software Based Rounding Policy

### You Spin Me Right Round, Baby

Few employees ever clock in or out exactly on the hour. Therefore, employers using time clocks or time clock software face each payroll period with the task of computing regular and overtime pay based upon the time worked according to punched timecards or any of the software platforms now available. How you spin the turntable was the topic of a recent DOL Opinion letter.



The FLSA rounding mandate is codified at 29 C.F.R. § 785.48(b) and reads in full: “Rounding” practices. It has been found that in some industries, particularly where time clocks are used, there has been the practice for many years of recording the employees' starting time and stopping time to the nearest 5 minutes, or to the nearest one-tenth or quarter of an hour. Presumably, this arrangement averages out so that the employees are fully compensated for all the time they actually work. For enforcement purposes this practice of computing working time will be accepted, 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.

In its opinion letter dated July 1, 2019 the Department of Labor confirmed its policy to “accept rounding to the nearest five minutes, one-tenth of an hour, one-quarter of an hour, or one-half hour as long as the rounding averages out so that the employees are compensated for all the time they actually work.” The DOL also reiterated that the policy must be applied facially neutral.

The software at issue recorded time worked to six decimal points and rounded to two decimal points using generally accepted rounding practices (.5 or greater rounding up; .4 or less rounding down such that 6.784999 hours worked rounded down to 6.78; or 6.865000 hours worked rounded up to 6.87). DOL approved the software's practice because it was applied neutrally and did not result in failure to compensate over time.

Often it is not the method of rounding that trips up employers but accompanying policies. For example, many employers have 7-minute policies providing employees are not permitted to clock in more than 7-minutes before their scheduled start time or more than 7-minutes after their scheduled stop time. Employers should take heed to make sure these policies coupled with rounding are applied evenly and fairly. Employers should not have policies—whether written or unwritten—as to whether time will always be rounded to favor the Employer. These are the types of rounding policies that have resulted in class actions and negative findings against employers.

If you are concerned about whether your payroll practices and policies comply with the FLSA and the recent DOL opinion letter and require legal counsel to assist you in this regard, please contact Ms. Stuart at 713-752-8656 or [kstuart@craincaton.com](mailto:kstuart@craincaton.com).