

## When figuring time worked, you must round in employee's favor

The New Jersey Department of Labor and Workforce Development (NJDOL) has changed its enforcement policy regarding the rounding of employees' time for wage payment purposes.

A recent letter from Theodore Easton, chief of enforcement for the NJDOL, confirmed that if a New Jersey employer rounds off any increment of time an employee has worked, it must now be done in the employee's favor.

The enforcement policy change has led state auditors to issue several wage payment violations resulting in substantial back-pay liability and penalties to employers found to be in violation of New Jersey Wage Payment Law.

The law requires employers to "pay employees for all time actually worked." (N.J.S.A. 34:11-4.2)

### Federal versus state regulations

In the absence of specific New Jersey regulation, the NJDOL previously deemed it acceptable for employers to comply with federal regulations under the Fair Labor Standards Act (FLSA).

Those regulations permit an employer to "record the employees' starting and stopping time to the nearest 5 minutes, or to the nearest one-tenth or quarter of an hour ... provided 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 C.F.R. § 785.48)

In other words, as long as an employee isn't shortchanged over the entire work period, rounding is fine under the federal rules.

### What employers currently do

Many New Jersey employers currently round to the nearest quarter hour. That is, if the employee is clocked in for seven minutes or less,

the employee is not paid. If he is clocked in for eight minutes or more, he is paid for the full 15 minutes. For example, if an employee ended work seven minutes before the end of his shift, his time would be rounded up. The employee would be credited for working those seven minutes and he would be paid accordingly, even though he didn't do any work in those seven minutes.

Conversely, if an employee left work seven minutes after the end of his shift, those minutes would be rounded down and he would not be paid for working those minutes.

The previously acceptable practice allowed New Jersey employers to round off employees' time as long as it was done evenhandedly, and monitoring practices were in place to prevent an employer from always rounding off time to its benefit.

### The new policy

The practice of rounding down is now prohibited by the NJDOL change in enforcement policy.

NJDOL credits advancements in technology for the policy change. It claims that new technology enables an employer to accurately track and pay for actual time worked to the minute.

The agency acknowledges that "no law or regulation exists that specifies how the time records must be kept or that prevents an employer from making adjustments if the employer believes that the time records do not reflect the actual time worked by the employee."

However, in order to comply with New Jersey Wage Payment Law, the agency now requires that the rounding of any increment of an employee's time worked, whether forward or backward, be done in the employee's favor.

The end result may mean higher labor costs.

### FLSA record-keeping rules

The federal Fair Labor Standards Act requires employers to keep records on wages, hours and other employee data, most of which is generally maintained in ordinary business practice.

You do not need to keep the records in any particular form or use time clocks. But if your company does use a time clock, its records should correspond as closely as possible to the actual hours worked.

### What employers should do

Genova, Burns & Vernoia is currently challenging the NJDOL's failure to follow the New Jersey Administrative Procedure Act in implementing this new enforcement policy.

However, we believe it is important for New Jersey employers that engage in rounding to review their practices and policies to avoid an expensive audit result.

It may be impractical to update all your timekeeping systems to count every minute worked and impossible to eliminate the typical line at the time clock.

If that's the case, employers will have to live with higher labor costs for the time being—or stop rounding altogether and calculate hours worked to the exact time recorded by the time clock, computer or badge-scanning system.



James J. McGovern III, a partner in Genova, Burns & Vernoia's Newark office is director of the firm's Labor Law Practice Group. Since 2002 he has served as Labor Counsel to the State of New Jersey, negotiating labor agreements on the state's behalf with the unions representing state employees. He can be reached at (973) 535-7122 or via e-mail at [jmcgovern@gvylaw.com](mailto:jmcgovern@gvylaw.com).