



LABOR & EMPLOYMENT DEPARTMENT

# ALERT

## NJ DEPARTMENT OF LABOR OFFICIALLY ADOPTS NEW ROUNDING RULE BASED ON FEDERAL COUNTERPART

By Ian D. Meklinsky and Eileen Powers

Both the New Jersey Wage and Hour Law and the federal Fair Labor Standards Act (FLSA) require employers to pay employees for “all hours worked.” However, over the past several years, what it practically means to pay employees for “all hours worked” has taken on two very different meanings under those laws.

For example, if an employer utilizes time clocks to record employee start and stop times for payment purposes, federal regulations permit employers to round start and stop times to the nearest five minutes, the nearest one-tenth or nearest quarter of an hour. This practice presumes an employer’s rounding arrangement will ultimately average out so employees are fully compensated for all time worked. It also accounts for the practical realization that 100 employees with an 8 a.m. start time cannot all punch in at the exact same time. To illustrate, under the FLSA, if an employee has an 8 a.m. start time but clocks in at 7:56 a.m. on Monday and 8:05 a.m. on Tuesday, an employer with a rounding system that records an employee’s time to the nearest one-tenth of an hour can pay the employee as though he or she clocked in at 8 a.m. both days.

The New Jersey Department of Labor (NJDOL), on the other hand, adopted a very different and stricter rounding enforcement policy, one that directed employers to round employee time only in favor of the employees. Thus, in the example above, a New Jersey employer

would possibly be required to pay the employee for the four minutes he or she was early on Monday and for the five minutes he or she was late on Tuesday.

Over the past several years, the NJDOL’s insistence on adhering to a rounding policy that starkly diverges from its federal counterpart has been the subject of considerable backlash from New Jersey employers, especially those with outlets in other states that are forced to maintain divergent payroll and compensation systems to adhere to the New Jersey policy. This policy has also resulted in excessive assessments for wages allegedly due by investigators enforcing this errant policy.

As a result of bringing this divergence to the attention of new NJDOL Commissioner Hal Wirth, the NJDOL has recently moved toward a uniform standard. Effective December 20, 2010, the NJDOL officially adopted as immediately operative N.J.A.C. 12:56-5.8, which states:

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 1/10 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.

The rule now mirrors the federal regulation in its entirety. The adoption of this new language marks a victory for all employers, especially those with multistate operations. Such employers can now maintain a uniform, nationwide rounding practice and payroll system.

The rounding rule change also presents a perfect opportunity for New Jersey employers to review their

payment policies to ensure continued compliance with state and federal rules and regulations.

For more information regarding this alert or if you have any questions about this new regulation or how to comply with any of New Jersey's wage laws, please contact Ian D. Meklinsky at 609.895.6756 or [imeklinsky@foxrothschild.com](mailto:imeklinsky@foxrothschild.com), Eileen Powers at 609.896.3600 or [epowers@foxrothschild.com](mailto:epowers@foxrothschild.com) or any other member of Fox Rothschild's Labor and Employment Department.



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