

“Rounding Errors” Can Add Up Quickly

It’s time to talk about time. For many employees, their lunch break is a time when they can step away from the grind, fill their bellies, recharge their batteries for the rest of their shift, and maybe even run a quick errand. That time is theirs. For employers, if they’re not careful, the cost of an employee’s lunch break can go far beyond the daily special at the nearest sandwich shop.

When I review employee handbooks for employers, I sometimes see policies stating that an employer will automatically deduct 30 minutes from an employee’s time for lunch breaks rather than requiring the employee to punch in and out on the time clock. From a practical standpoint, this might make complete sense; it saves employers from an additional administrative headache and saves employees from having to trudge over to the time clock before and after lunch. Besides, any real difference between an employee’s *real* lunch break and the automatic 30-minute deduction can probably just be written off as a “rounding error” with no real legal significance. Right?

Wrong!

Under the Fair Labor Standards Act and New York State



Labor Law, hourly and other non-exempt employees must be paid for *all* time worked. Accordingly, this type of “automatic lunch deduction” policy and others like it, though not technically illegal, can create serious problems for employers when the policy does not accurately capture and pay all of the hours (and minutes) worked by an employee.

Imagine this situation: an employee approaches an attorney claiming that he was not provided a full 30-minute lunch break, as required by NYS law. The employee claims that even though the employer automatically deducted 30 minutes from his time every day, the employee really only received 15 minutes per day to eat – barely enough time to scarf down his Cheetos and Diet Mountain Dew.

Setting aside the separate potential violation for failing to provide proper meal peri-

ods, the employer here could be in serious trouble. Importantly, if an employer fails to keep accurate time records of time actually worked by an employee, then a court or the Department of Labor (DOL) will generally accept an employee’s own accounting of his or her time worked is correct, unless the employer can definitively prove otherwise. Because they did not record the actual lunch break times, the employer in this example would have great difficulty refuting the employee’s accusations (and a less-than-honest employee might be incentivized to overestimate a little).

Let’s do the math: If this employee makes twenty dollars an hour, then there is a significant possibility that the DOL or a court could determine that the employer illegally withheld \$5.00 (15 minutes worth of work) from the employee’s wages for each workday, or \$25.00 per week. Assuming that the employee worked 50 weeks each year, that adds up to \$1,250.00. And don’t forget that New York has a six-year statute of limitations for wage claims, so if this is a long-term employee, then the lost wages

could be as high as \$7,500 for the covered period – for just this one employee!

Alarming, this calculation does not even take into account liquidated damages (which can be up to *double* the amount of unpaid wages), potential overtime costs, civil penalties, attorney’s fees, or potential criminal charges. Suddenly, one employee’s complaint about 15-minutes becomes a five-figure problem. Now imagine if you have ten, one hundred, or even a thousand employees in the same boat.

We don’t write this to scare you; we just to make you aware that a couple of minutes here and there can make a huge difference if your payroll practices do not precisely record non-exempt employees’ time.

Similar – costly – issues can arise in the following situations when:

- Your time clock system rounds non-exempt employees’ time in a way that improperly benefits the employer and disadvantages the employee. For example, if an employee arrives five minutes before scheduled starting time but does not start getting paid until the scheduled shift start,

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whereas if the employee leaves five minutes early, the pay stops immediately.

- Non-exempt employees are required, or allowed, to perform work before or after their shifts that is not recorded. For example, a non-exempt employee reviews and responds to work-related emails in the evening after clocking out for the day.
- Non-exempt employees are not paid for the short (generally less than 20 min-

ute), non-meal breaks taken during the day.

- Non-exempt employees are not paid for the time taken to put on or remove certain clothing and/or equipment that is integral and indispensable to their jobs.

The key is to make sure that you accurately record *all the time your non-exempt employees work* and not take shortcuts that might hurt you in the end. If your system uses automatic deductions or rounding and making a change is simply not feasible, then scrutinize your systems more closely to make sure that they calculate working time accurately and do not disadvantage your employees. In addition, think carefully about how you will be able to prove that an employee actually took the full 30-minute lunch when they later claim otherwise.

We’ve all heard the refrain that “every second counts.” Now you can see how that’s doubly true when paying your non-exempt employees. Make sure your policies and systems are accurate for you and your employees. It’s worth your time.

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