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**OFFICE OF THE LABOR COMMISSIONER**

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June 21, 2013

Mr. Rob Parker  
Human Resources Representative  
Nevada Association of Employers

Re: Advisory Opinion of the Nevada Labor Commissioner  
Use of time clock rounding to calculate employee pay

Mr. Parker:

In response to your request for an Advisory Opinion from the Nevada Labor Commissioner as to *whether the use of time clock rounding to calculate employee pay is appropriate under Nevada law*, the Office of the Labor Commissioner has conducted a thorough review of all relevant statutes, regulations, and case law. It is the position of the Nevada Labor Commissioner that time clock rounding is appropriate so long as the rounding policy is used in a manner that does not result, over a period of time, in a failure to compensate employees properly for all the time actually worked.

**I. THERE IS NO NEVADA LAW REGARDING TIME CLOCK ROUNDING**

Although the Nevada Labor Commissioner recognizes that many Nevada employers engage in time clock rounding to calculate employee pay, there is no Nevada statute or case law permitting or prohibiting such a practice. However, pursuant to NRS 608.016, employers are required to compensate employees for all time worked. If time clock rounding results in an employer failing to compensate an employee for all time the employee actually worked, the employer would be in violation of NRS 608.016 and subject to an adverse final decision by the Labor Commissioner. Therefore, the only time this office becomes concerned with time clock rounding is when it fails to adequately compensate employees.

However, the Office of the Labor Commissioner has been receiving an increasing number of questions from Nevada employers and employees alike concerned about time clock rounding despite this office's position. Therefore, the Office of the Labor Commissioner has undertaken a careful review of all relevant federal regulations under the Fair Labor Standards Act and authority in other states for guidance and to alleviate those concerns.

## **II. FEDERAL LAW PERMITS TIME CLOCK ROUNDING**

Under the Fair Labor Standards Act (FLSA), employers are permitted to use time clock rounding under certain circumstances. Specifically, the federal regulation 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 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 worked. *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.* (29 C.F.R. § 785.48(b), emphasis added.)

Courts have consistently held that this regulation permits employers to use time rounding in determining employee pay so long as the policy is neutral on its face and in its application and does not, on average, under-compensate employees. Therefore, as long as time clock rounding policies do not result, over time, in a failure to compensate employees for all time actually worked, employers who round are in compliance with federal law.

Additionally, as the regulation itself indicates, employers across the country have used time clock rounding as a method for calculating time worked for many years. Absent controlling or conflicting state law, there is no reason why this practice could not continue.

## **III. OTHER STATES FOLLOW FEDERAL LAW PERMITTING TIME CLOCK ROUNDING**

Many states, like Nevada, do not specifically address time clock rounding by statute, regulation, or case law. However, these states construe the requirements of their wage and hour laws in a manner consistent with the federal regulation permitting time clock rounding. For example, an Arizona court found that because Arizona had no law that "disapproves of the federal rounding regulations or suggests that these regulations are inconsistent with the policies underlying the

Arizona wage laws” that it was reasonable to interpret Arizona law in a manner consistent with the federal regulation. East v. Bullocks, Inc., 34 F.Supp.2d 1176, 1184 (D. Ariz. 1998).

More recently, a California court approved of time clock rounding so long as “the rounding policy is fair and neutral on its face and ‘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 actually worked.’” See’s Candy Shops, Inc. v. Superior Court, 210 Cal. App. 4th 889, 907 (Cal. App. 4th Dist. 2012). The Court recognized that time clock rounding is a practical method for calculating time worked and can be a neutral calculation tool for paying employees. Further, the net effect of time clock rounding is to allow employers to efficiently calculate hours worked without imposing unnecessary burdens on employees.

#### **IV. TIME CLOCK ROUNDING IS NOT INCONSISTENT WITH NEVADA LAW**

The Office of the Labor Commissioner is tasked with enforcing Nevada wage and hour laws. In particular, this office is charged with ensuring that all employees are treated fairly under the law. It is the position of the Nevada Labor Commissioner that time clock rounding is not inconsistent with Nevada wage and hour laws.

For enforcement purposes, so long as Nevada employers utilize a time clock rounding policy that will not result, over time, in a failure to compensate employees properly for all time worked, they will not be in violation of Nevada law, pursuant to NRS 608.016. For this office to take a different position would result in an additional burden on Nevada employers and deny them a practical and effective tool for calculating time worked that is available to all other employers throughout the country.

#### **CONCLUSION**

After a thorough review of all applicable statutes and authority, it is the position of the Nevada Labor Commissioner that time clock rounding is appropriate so long as the rounding policy is used in a manner that does not result, over a period of time, in a failure to compensate employees properly for all the time actually worked.

Sincerely,



Thoran Towler  
Nevada Labor Commissioner