Employers Win This Round: CA Court of Appeal Upholds Employer's Rounding Policy

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Employers may continue to rely on rounding systems that are neutral in policy and in practice. On June 25, 2018, the California Court of Appeal issued its decision in *AHMC Healthcare, Inc. v. Superior Court of Los Angeles County (Letona),* finding legal an employer's use of a payroll system that automatically rounds employee time up or down to the nearest quarter hour. The healthcare employees challenged the employer's method of calculating hours worked under the Private Attorneys General Act (PAGA). The employer was able to show that, over a 4-year time period, the employees benefitted from the rounding policy on an overall basis.

The payroll system rounded employee hours up or down to the nearest quarter hour, instead of using the employees' exact clock-in and clock-out times. For example, if employees clocked in between 6:53 and 7:07, they were paid as if they had clocked in at 7:00. If employees clocked in between 7:23 and 7:37, they were paid as if they had clocked in at 7:30.

To pass muster under state and federal law, a rounding system must round all employee time punches without regard to whether the employer or the employee is benefitting from the policy. The employer must adopt a system that is used in such a manner so as not to result, over a period of time, in a failure to compensate the employees properly for all time actually worked. AHMC Healthcare established that the rounding policy was neutral, applied fairly, and provided a net benefit to employees when considered as a whole. Specifically, for a majority of the shifts over a 4-year time period, the rounding policy resulted in employees having gained compensable time at two different hospitals.

Plaintiffs argued that the policy was unlawful because a slight majority of employees at one of the hospitals lost an average of 2.33 minutes per shift. In addition, each of the plaintiffs individually lost hours as a result of the rounding policy. The Court rejected plaintiffs' argument, holding that "where the system is neutral on its face and overcompensates employees overall by a significant amount to the detriment of the employer, the plaintiff must do more to establish systematic undercompensation than show that a bare majority of employees lost minor amounts of time over a particular period." The Court

emphasized that the employees, overall, had benefitted from the rounding policy.

The Court expressly declined to consider the *de minimus* rule, which under federal law permits an employer to disregard "insubstantial or insignificant periods of time beyond the scheduled working hours." The question of whether the *de minimus* rule is available as a defense to wage claims brought under the California Labor Code currently is before the California Supreme Court in *Troester v. Starbucks Corp., rev. granted* Aug. 17, 2016, Case No. S234969.

The Supreme Court's impending decision in *Troester v. Starbucks* may very well impact an employer's rounding policy. But at least for now, employers may continue to rely on rounding policies that are neutral in policy and in practice.

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