



FLSA2019-9

July 1, 2019

Dear **Name***:

This letter responds to your request for an opinion concerning whether a certain organization's rounding practices are permissible under the Service Contract Act (SCA), which uses principles applied under the Fair Labor Standards Act (FLSA) to determine hours worked. This opinion is based exclusively on the facts you have presented. You represent that you do not seek this opinion for any party that the Wage and Hour Division (WHD) is currently investigating or for use in any litigation that commenced prior to your request.

BACKGROUND

You inquire on behalf of a non-profit organization that employs individuals with disabilities under government contracts that are subject to the SCA.¹ This organization uses payroll software to calculate wages based on recorded time entries. You represent that the organization's payroll software rounds each employee's daily hours worked in a neutral manner.

Specifically, employees generally clock in and out for each work period using a time clock or computer and the payroll software converts the amount of time an employee records working in each work period into a numerical figure in decimal form extended out to six decimal points (*e.g.*, 7 hours and 30 minutes converts to 7.500000 hours).² The payroll software then totals the converted hours (extended to six decimal points) for each work period on each working day to calculate a numerical figure for daily hours, which is also extended out to six decimal points. Next, the software rounds that number to two decimal points—if the third decimal is less than .005, the second decimal stays the same (*e.g.*, 6.784999 hours worked rounds down to 6.78 hours); but if the third decimal is .005 or greater, the second decimal rounds up by 0.01 (*e.g.*, 6.865000 hours worked in a work day rounds up to 6.87 hours).³ Finally, the software calculates daily pay by multiplying the rounded daily hours number by the SCA prevailing wage.

¹ You represent that the organization does not pay any employee a subminimum wage rate under FLSA section 14(c), 29 U.S.C. § 214(c).

² You represent that a work period is the time between a clock-in and clock-out during a work day, and that usually one work period precedes a break of at least 30 minutes and one work period follows the break.

³ According to your letter, the software rounds an employee's daily hours downward by no more than 0.29994 minutes per day, and rounds an employee's daily hours upward by as much as 0.3 minutes per day.

GENERAL LEGAL PRINCIPLES

The SCA generally requires government contractors to satisfy certain minimum compensation standards for employees under covered contracts. *See* 41 U.S.C. § 6701 *et seq.* SCA regulations provide that contractors should calculate hours worked by using FLSA principles set forth in part 785 of the regulations. *See* 29 C.F.R. § 4.178; *see also* 29 C.F.R. Part 785. Section 785.48(b) acknowledges that it is common and acceptable for employers to round time in determining an employee's hours worked provided that doing so "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). It has been our policy to accept rounding to the nearest five minutes, one-tenth of an hour, one-quarter of an hour, or one-half hour as long as the rounding averages out so that the employees are compensated for all the time they actually work. *See id.*; WHD Opinion Letter, 1994 WL 1004879 (Nov. 7, 1994); *see also Corbin v. Time Warner Entm't-Advance/Newhouse P'ship*, 821 F.3d 1069, 1077-79 (9th Cir. 2016) (upholding a policy of rounding to the nearest quarter hour, which was "neutral on its face and as applied" to the plaintiff-employee over several pay periods).

OPINION

Based on the facts you provided, this particular organization's method of calculating hours worked complies with FLSA regulations and is therefore compliant under the SCA.⁴

Its rounding practice is neutral on its face. The practice also appears to average out so that it fully pays its employees for all of the time that they actually work. Accordingly, the organization's rounding practice "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).

We trust that this letter is responsive to your inquiry.

Sincerely,



Cheryl M. Stanton
Administrator

***Note: The actual name(s) was removed to protect privacy in accordance with 5 U.S.C. § 552(b)(7).**

⁴ As noted above, the SCA uses FLSA principles to determine an SCA employee's hours worked. *See* 29 C.F.R. § 4.178. As such, the FLSA's rounding rule in 29 C.F.R. § 785.48(b) applies to the SCA.