

One Minute Memo[®]



California Court Approves Federal Time-Rounding Practices

In *See's Candy Shops, Inc. v. Superior Court (Silva)*, the California Court of Appeal held that California employers may round employee work hours so long as the practice averages out over a period of time and does not result in the failure to compensate employees for actual time worked.

The Facts

Pam Silva, a former retail sales employee, sued See's Candy on behalf of herself and others, claiming that the company's time-rounding and "grace period" practices failed to compensate employees for all hours worked. Under the rounding practice, the time an employee punched into the Kronos timekeeping system was rounded up or down to the nearest tenth of an hour, resulting in punches being rounded to the nearest three-minute mark. See's also had a separate "grace period" policy that permitted employees to punch into Kronos up to 10 minutes before their scheduled shift and punch out up to 10 minutes after their scheduled shift, but paid them only for their scheduled shift if they performed no work during the 10-minute grace periods.

In response to Silva's claims, See's raised multiple defenses, styled as "affirmative defenses." One was that See's nearest-tenth rounding practice is consistent with state and federal laws permitting employers to use rounding to calculate wages and that this rounding practice did not deprive employees of full and accurate compensation.

Silva moved to summarily dismiss the defenses regarding the time-rounding practice, but did not challenge the grace period practice. Silva argued that the rounding was unlawful under the "plain language" of California Labor Code Section 204, which requires that "all wages" be paid at least twice a month, and under Section 510, which requires that employers pay overtime compensation for "any work" in excess of eight hours in a day or 40 hours in a week.

In response, See's presented evidence from an expert witness demonstrating that its rounding practices did not result in an underpayment of wages to employees over time. Despite See's evidence, the trial court accepted Silva's statutory arguments and ruled that the rounding practice was unlawful.

See's filed a writ petition challenging the trial court's order. The Court of Appeal declined to hear the writ. See's then filed a petition for review to the California Supreme Court, which ordered the Court of Appeal to hear the matter.

The Appellate Court Opinion

The Court of Appeal reversed the trial court's order dismissing See's rounding defenses. The Court first recognized that neither California statutory law nor case law directly addressed the practice of rounding. The Court then determined that given the absence of binding California authority, it was appropriate for the Court to adopt the standard for permissible rounding practices articulated in the federal regulations and utilized by California's Department of Labor Standards Enforcement ("DLSE").

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Under that standard, the Court held that a rounding practice that is neutral on its face and in its application is permissible under California law because “its net effect is to permit employers to efficiently calculate hours worked without imposing any burden on employees.” The Court declined to impose Silva’s proposed requirement that employers perform semi-monthly audits of actual punch in and out times to ensure that their rounding practices do not undercompensate any employee during the previous pay period.

The Court of Appeal rejected Silva’s Section 204 and Section 510 arguments, reasoning that Section 204 governs the *timing* of payment, not the *calculation* of wages, and that Section 510 governs how to calculate overtime pay, not how to measure the underlying wage.

The Court also rejected Silva’s argument that See’s had admitted to keeping “inaccurate” time records when it explained that its grace period policy compensates employees who punch in 10 minutes early or punch out 10 minutes late based on their work schedule. Finally, the Court disposed of Silva’s claim that California should have a special rule on rounding because California has a peculiar requirement of daily overtime pay. The Court reiterated that the relevant measure was the effect of a rounding practice over time and that See’s had presented sufficient evidence that its policy compensated employees for all hours worked over time to avoid summary adjudication on the issue.

Although See’s grace period practice was not directly at issue on appeal, the Court suggested that such a practice may be permissible if the employees are not under the employer’s control at the time, if there is a policy in place informing employees that they are not to perform work during this grace period, and if there is a system in place for employees to be compensated if they do work during the grace period.

What *Silva* Means for Employers

Silva is the first California state court case adopting the federal standard for time-rounding practices. Although the California DLSE has utilized the standard contained in the federal regulation for years, the agency’s application of the regulation was not the product of formal rule-making and therefore lacked the force of law.

The Court of Appeal’s decision allows California employers who use rounding to employ the practice with greater confidence, so long as they take steps to ensure that the practice does not result in the over- or under-payment of wages over time. Employers who use rounding also should take steps to guard against the potentially unfair application of a disciplinary policy if employees are considered tardy based on their actual punch-in time, but have their time rounded for purposes of compensation. Additionally, employers now have more guidance regarding the permissibility of grace periods permitting early punch-ins and late punch-outs, but should be diligent about ensuring that employees do not work during this time and that, if they are, that their compensation time is corrected to reflect that additional work time.

Seyfarth Shaw filed amicus briefs in support of See’s with both the Supreme Court and the Court of Appeal.

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