

Monthly Memo

SEE'S CANDY MAY HAVE A BAD TASTE FOR SOME EMPLOYEES

Both Federal and California laws have allowed employers to “round off” the actual time an employee has worked, which, in turn affects the amount the employee is actually paid.

The California Division of Labor Standards Enforcement states “In recording working time, insubstantial or insignificant periods of time beyond the scheduled, working hours which cannot as a practical administrative matter be precisely recorded for payroll purposes, may be disregarded.”

The foregoing applies only to short periods of time (a few minutes). Also, if an employee comes in to work early without any requirement to do so and without actually working or stays late at the business for no business related reason, the employee is not required to be paid. “Minor differences between the clock records and actual hours worked cannot ordinarily be avoided, but major discrepancies should be discouraged.”

In the case of *See's Candy Shops, Inc. v. Superior Court of San Diego (Pamela Silva)*, in California's Fourth District Court of Appeal, a See's employees filed a class action lawsuit claiming that See's Candy must pay for the exact time the employee worked. The employee wants to void any six minute nonpayment period. A trial was held and the San Diego Superior Court supported the employee's claim. However, third parties were very supportive of encouraging See's Candy Shops, Inc. to appeal the decision.

Per the California's Division of Labor Standards Enforcement published statement cited above, California law supports the six minute waiver. “There has been that practice for many years of recording the employees' starting time and stopping time to the nearest five minutes, or the nearest one-tenth of a quarter of an hour.”

“Presumably, this arrangement averages out so that the employees are fully compensated for all the time they actually work.” However, if an individual employee “clocks in” but does not do any actual work, the employee is not required to be paid. The best policy is to have employees who spend time drinking coffee, eating, telephoning others or have general discussions with co-workers do it on their own time. Employees need only clock in when they are actually working.

It will be interesting to see what the California's 4th Circuit Court of Appeals does with the case.