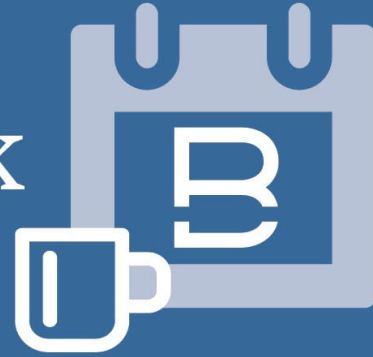


The Work Week

Bassford Remele Employment Practice Group



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Welcome to another edition of *The Work Week with Bassford Remele*. Each Monday morning, we will publish and send a new article to your inbox to hopefully assist you in jumpstarting your work week.

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Employers Face Scrutiny under the FLSA for Rounding Employee Time

Eighth Circuit Reverses Dismissal in Class Action Case Against Employer for Rounding Off Employee Time at the Beginning and End Of The Day Because It May Violate The FLSA

[Madeline M. Gustafson](#)

It may be common practice for employers to round-off employees' time based on their clock-in and out time using an automated timekeeping system, but a recent decision by the Eighth Circuit suggests the practice *might* violate the Federal Fair Labor Standards Act ("FLSA"). Employers could be in hot water if the cumulative effect of the timekeeping policy actually reduces employee compensation over time.

In *Houston v. Saint Luke's Health System*, 76 F.4th 1145 (8th Cir. 2023), Torri Houston, and others similarly situated, brought a lawsuit against St. Luke's Health System for violating the FLSA, alleging that St. Luke's was not fully compensating employees for work performed because of St. Luke's practice of rounding off time at the beginning and end of all shifts. Specifically, St. Luke's used an automated time-keeping policy, tracking time in six-minute increments. For example, if an employee clocked in at 8:56 a.m. and their shift began at 9:00 a.m., they would not get paid for the four minutes they clocked in early. Likewise, if an employee clocked out early at 4:54 p.m. for a shift ending at 5:00 p.m., they would still be paid for the unworked six minutes.

The FLSA requires employers to pay overtime to employees who work more than 40 hours per week. 29 U.S.C. § 207(a)(1). The Eighth Circuit noted that "longstanding regulations" allow employers to use automated timekeeping systems to round employee's clocked start and end times for ease in calculating time worked. 29 C.F.R. 785.48(b). The FLSA's position is that if an employee voluntarily clocks in early and does not actually work during that time, they do not need to be compensated for that time. However, the plaintiffs in this case maintain they were coming in early and working during the minutes they were not compensated.

In analyzing whether the policy is legal under the FLSA, the court also noted the time policy must be facially neutral. The court explained that St. Luke's policy was neutral; it was not only rounding down but also rounding up.

Even so, the court was concerned with the actual cumulative effect of the policy, such as failing to compensate an employee hundreds of dollars in a year when the rounding policy in theory should simply average out over time. This detrimental effect over time on the employee is what *may* violate the FLSA.

According to expert testimony, the policy had a detrimental effect over time. The court, therefore, determined there was a fact issue as to the effect the automated time policy had on employees. As a result, the Eighth Circuit reversed the district court's decision to dismiss the lawsuit on summary judgment. Because there was a fact issue, the Eighth Circuit did not address whether the effect was *de minimis* or so minimal that it would not be actionable under the FLSA.

Due to this recent decision, employers should ensure that their time clock policy does not, over a period of time, fail to actually count the hours employees work. Such policies can open employers up to liability.

In response to this decision employers should:

- Ensure there is a policy with respect to clocking in and out and that the policy is enforced uniformly for every employee;
- If you already have a policy, review it, and monitor its effect on your employees. Employees should not be penalized due to the policy;
- Consider compensating your employees for their exact time worked so as to not run afoul of the FLSA. Given the advancements in technology, this may be more straightforward than it used to be; and
- Ensure there are safeguards in place to guarantee employees are being compensated for their time worked, such as a manager reviewing time sheets or time cards on a regular basis.

Whether you're a business owner navigating wage and hour issues or an HR professional seeking clarity on compliance, our team is here to help. For FLSA compliance questions, contact [Bassford Remele](#). Our lawyers have deep experience in Fair Labor Standards Act matters and are committed to assisting you.

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