

# **DIVISION OF LABOR STANDARDS ENFORCEMENT**

## **ENFORCEMENT POLICIES AND INTERPRETATIONS MANUAL**

### **47 CALCULATING HOURS WORKED.**

47.1 **Rounding.** The Division utilizes the practice of the U.S. Department of Labor of “rounding” employee’s hours to the nearest five minutes, one-tenth or quarter hour for purposes of calculating the number of hours worked pursuant to certain restrictions. (29 CFR § 785.48(b))

47.2 **“Rounding” Practices.** As mentioned above, the federal regulations allow rounding of hours to five minute segments. There has been practice in industry for many years to follow this practice, recording the employees’ starting time and stopping time to the nearest 5 minutes, or to the nearest one-tenth or quarter of an hour. Presumably, this arrangement averages out so that the employees are fully compensated for all the time they actually work. For enforcement purposes this practice of computing working time will be accepted by DLSE, provided that it is used in such a manner that it will not result, over a period of time, in failure to compensate the employees properly for all the time they have actually worked. (See also, 29 CFR § 785.48(b))

47.2.1 **Recording Insignificant Time Periods.** 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 courts have held that such trifles are *de minimis*. (*Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680 (1946); *Lindow v. United States* 738 F.2d 1057 (9th Cir.1984) ) This rule applies only where there are uncertain and indefinite periods of time involved of a few seconds or minutes duration, and where the failure to count such time is due to considerations justified by industrial realities.

47.2.1.1 An employer may not rely on this policy to arbitrarily fail to count as hours worked any part, however small, of the employee’s fixed or regular working time or practically ascertainable period of time he is regularly required to spend on duties assigned to him. See *Glenn L. Martin Nebraska Co. v. Culkin*, 197 F. 2d 981, 987 (C.A. 8, 1952), *cert. denied*, 344 U.S. 866 (1952), rehearing denied, 344 U.S. 888 (1952), holding that working time amounting to \$1 of additional compensation a week is “not a trivial matter to a workingman,” and was not *de minimis*; see also *Addison v. Huron Stevedoring Corp.*, 204 F. 2d 88, 95 (C.A. 2, 1953), *cert. denied* 346 U.S. 877, holding that “[T]o disregard workweeks for which less than a dollar is due will produce capricious and unfair results;” and *Hawkins v. E. I. du Pont de Nemours & Co.*, 12 W.H. Cases 448, 27 Labor Cases, para. 69,094 (E.D. Va., 1955), holding that 10 minutes a day is not *de minimis*.

47.2.2 **Differences Between Clock Records And Actual Hours Worked.** Time clocks are not required but in those cases where time clocks are used, employees who voluntarily come in before their regular starting time or remain after their closing time, do not have to be paid for such periods provided, of course, that they do not engage in any work.

47.2.2.1 Actual facts must be investigated, of course, however, unless the employee is either performing work during the period or has been directed by the employer to be on the premises, the early or late clock punching may be disregarded. Minor differences between the clock records and actual hours worked cannot ordinarily be avoided, but