

U.S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
WASHINGTON, D.C. 20210

25 AD 203
25 BA 412.2
P.D.

SEP 18 1973

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This is in reply to your letter of August 8, 1973, in which you state that a public utility has adopted a pay computation plan based on tenths of an hour. Under the plan, an employee who works 8 hours and 5 minutes is paid for 8 hours of work since the plan does not provide for "rounding off" to a higher or lower time unit.

It has been our policy to disregard insubstantial and insignificant periods of time outside the scheduled working hours; for example, we have taken the position that, if on occasion, an employee works 8 hours and 4 or 5 minutes, and this is "rounded off" to 8 hours, no violation of the overtime pay requirements of the Fair Labor Standards Act has occurred unless this was a consistent occurrence.

This policy, however, applies only when a few minutes are involved and where the failure to count such time as hours worked is due to conditions justified by industrial realities. It should be noted, however, that where an employer arbitrarily fails to pay an employee for any part of the employee's fixed or regular working time, however small, this would be considered a violation of the Act.

Since you did not furnish us data regarding the frequency of occasions when working time was not paid for, we are reluctant to express a categorical opinion on this matter. However, if you will assemble as much pertinent information as possible as to frequency of occurrence and other details of the pay computation practice, the people at our Trenton, New Jersey, office located at 143 East State Street 08608, telephone: 609-599-3511, will be pleased to discuss the matter with you and answer any questions you may have.

As requested, there is enclosed a copy of Interpretative Bulletin Part 785; you may wish to review the case citations listed in section 785.47.

SIGNED

Sincerely,

WARREN D. LANDIS
ASSISTANT ADMINISTRATOR
WAGE AND HOUR DIVISION

Ben P. Robertson
Acting Administrator
Wage and Hour Division
Enclosure