

HEALTH CARE INDUSTRY PAY PRACTICES SUBJECT TO INCREASED DEPARTMENT OF LABOR SCRUTINY

The Department of Labor (“DOL”) recently announced an initiative to promote compliance with the Fair Labor Standards Act (“FLSA”) in the health care industry. This comes after a finding by the DOL that many hospitals and nursing homes do not pay proper overtime to nurses and other employees who work more than 40 hours a week. In addition to the increase in DOL enforcement proceedings, class action plaintiff lawyers are sending mailings to the homes of registered nurses across the country in search of hospitals to sue for wage/hour violations. As a health care industry employer you may be at risk and your potential liability for FLSA violations could total in the hundreds of thousands of dollars or more in back pay and penalties.

If your payroll system automatically deducts meal periods from employees, particularly nonexempt nurses, you may be in violation. For example, SSM Health Care has paid more than \$1.7 million in back wages to 4,000 workers following a U.S. Department of Labor investigation. Federal investigators found that this group of Missouri hospitals violated overtime provisions by failing to pay its nonexempt nursing staff time and one-half their regular rates for hours worked beyond 40 in a workweek. The employees were not paid when they were required to work during some meal periods. The company’s timekeeping system automatically deducted time for meal periods whether the employees were fully relieved of their duties or not. The DOL found \$1,738,133 in back wages due to 4,007 employees.

Partners HealthCare Systems Inc. and its affiliated hospitals and health care companies throughout eastern Massachusetts agreed to pay 700 employees more than \$2.7 million in overtime back wages to resolve a lawsuit filed by the U.S. Department of Labor alleging violations of the federal Fair Labor Standards Act (FLSA). The violations arose because employees were working for more than one Partners-affiliated hospital or health care facility during a single workweek, creating a joint employment problem, but their hours worked during those workweeks were not being combined to determine if overtime was due.

Similarly, in a class action suit that is still pending, several major health systems in Pittsburgh, Pennsylvania have been sued by current and former employees alleging FLSA violations. These violations include a failure (i) to pay overtime as a result of the hospitals’ not compensating hourly-paid employees for meal breaks during which the employees performed at least some work for their employer; (ii) to properly compensate employees for hours worked before and after their shifts, and (iii) to properly compensate employees for attending training sessions.



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Brown Rudnick is involved in a DOL investigation of a client in the healthcare industry who operates various call centers for members to call in with questions or problems. DOL has suggested that call center employees must be paid for the time to boot-up their computers, log into the on-line time keeping system, and load various software applications prior to the putative start of the work day. These few minutes of time across many employees' results in a significant back wage demand in the millions of dollars. DOL has rejected arguments that the time is de minimis (i.e., minor), preliminary, or subject to ordinary rounding rules for timekeeping.

Additional wage and hour violations under scrutiny by the DOL include:

- Failure to properly pay employees for off-premises work, including time spent answering phone calls and emails — i.e., so-called Blackberry™ time;
- Failure to ensure that customized payroll software complies with state and federal wage/hour laws;
- Failure to include on-call pay, incentive pay, bonuses and shift differential in calculating overtime;
- Improper classification and/or deductions for exempt employees; and
- Improper accounting of hours that cross over workdays and/or workweeks.

To ensure compliance with the federal wage and hour laws, we strongly recommend that employers in the health care industry conduct an audit of their existing wage and hour policies, procedures and practices. Additional strategies for compliance include updating and revising policies to ensure a uniform, company-wide standard for applying wage and hour compliance issues, as well as implementing an effective training program for management.

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