

USDOL Targets NYS Healthcare Industry For FLSA Compliance

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The United States Department of Labor (“USDOL”) recently announced – as part of its new initiative to expose and remedy the misclassification of workers—that it is launching wage-hour investigations of employers in New York State’s healthcare industry. The aim is to promote compliance with the minimum wage, overtime, recordkeeping, and coverage (*i.e.*, misuse of independent contractors) provisions found in the Fair Labor Standards Act (“FLSA”). Underlying this effort is a finding by the USDOL’s Albany district office that, during the last five years, almost two out of every three healthcare employers that it investigated were violating different FLSA requirements, negatively impacting wages paid to workers in this industry.

Hospitals, nursing homes, and home health agency providers need to take note that the USDOL is actively investigating wage-hour classification and payroll practices in the healthcare industry in many other states, and the plaintiffs’ class action bar has taken note that this is fertile territory. One prominent plaintiffs’ law firm even has a website devoted to hospital overtime and class action lawsuits! Wage and hour settlements in the healthcare industry have exceeded millions of dollars paid to class members. In December 2009, SSM Healthcare in Missouri entered into a \$1.7 million settlement with the USDOL covering 4,000 nurses who suffered automatic timekeeping deductions for meal periods and rest breaks without regard to whether the nurses were relieved of duties or were working. Similarly in August 2009, Kaiser Permanente settled a class action lawsuit for \$1.4 million for misclassifying project managers as exempt from overtime. This followed on the heels of a \$2 million settlement for compensable travel time violations, in late November 2007, with Total Health Home Care Corp., a Pennsylvania Company that employs nearly 3,000 home healthcare workers. Further, there are numerous unreported settlements of wage-hour cases among New York State healthcare employers.

Leaving aside the healthcare industry, according to one reputable report, the monetary value of the top 10 private wage-hour settlements, in 2009, approached \$360 million. This figure doesn't include settlements reached with federal or state labor departments. So, as you can see, now is the time to take proactive steps *before* the USDOL or the plaintiffs' bar starts contacting your employees.

Action Steps For Employers

Common wage-hour violations that beset many employers are also found in the healthcare industry and include the misclassification of workers (as exempt from overtime), "off-the-clock" work, failure to correctly calculate overtime pay (e.g., inadvertently excluding incentive pay, shift differentials and bonuses), and improper wage deductions violative of federal or state law requirements. Simply because workers may have important titles or responsibilities (e.g., manager, coordinator, specialist) doesn't necessarily make them exempt, (see [Proskauer's February 2010 Tip of the Month](#) discussing the Administrative exemption from overtime). Periodically auditing your classification of employees for overtime purposes, as well as reviewing payroll practices, are action steps many employers are considering in the wake of heightened enforcement activity. In addition, healthcare employers should not presume that their workers are performing no duties during meal periods or rest breaks, and timekeeping systems and practices which automatically deduct such time from compensable hours worked need to be monitored and reviewed.

Proskauer's Employment Law Counseling Practice Group has significant experience working with businesses and healthcare employers of all sizes and has conducted numerous wage-hour classification and payroll practices audits. In addition, we have represented numerous employers in and outside the healthcare industry in connection with federal and state Department of Labor investigations. As the healthcare industry is now a target of the USDOL's compliance initiative, your facility should ensure that its employee classifications and payroll practices are up-to-date and in compliance with federal and state legal requirements. If you want to discuss how we can help your organization conduct a wage-hour classification and payroll practices audit in a proactive effort designed to help reduce litigation risk and potential exposure, please contact your Proskauer relationship attorney or any of the attorneys listed here.

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